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14 SACRAMENTO, CALIFORNIA

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18 MONDAY, JUNE 20, 1994

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27 Evelyn J. Mizak
28 Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

E. JACKSON GOING, Member
California Regional Water Quality Control Board
San Francisco Bay Region

SENATOR ALFRED ALQUIST

RUTH GRAVANIS, Director
Restoring the Bay Campaign

BRUCE LIVINGSTON, California Director
Clean Water Action

SENATOR QUENTIN KOPP

SENATOR TOM CAMPBELL

BILL CAMERON
Sacramento Chapter
United Anglers of California

ARTHUR FEINSTEIN, Program Coordinator
Golden Gate Audubon Society

MIKE PAPARIAN
Sierra Club

APPEARANCES (Continued)

DAVID NESMITH
San Francisco Bay Chapter
Sierra Club

CAROLE D'ALESIO
Marin Conservation League

LESLEE HAMILTON
Silicon Valley Toxics Coalition

JANE MILLS
Marin County Audubon Society

LINDSAY REHM
Environmental Forum of Marin County

MARY RAFTERY
California Public Interest Research Group

DENNY LARSON, Campaign Director
Citizens for a Better Environment

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CHAIRMAN LOCKYER: With respect to gubernatorial appointments, the Governor's Office has indicated that they'd like more time to consider legal opinions with respect to Mr. Burke, but we have Jack Going here.

Mr. Going, do you want to come up.

Senator Alquist, did you want to make an introduction?

[Thereupon the Senate Rules Committee acted upon legislative agenda items.]

CHAIRMAN LOCKYER: Mr. Going is next.

SENATOR ALQUIST: Thank you, Mr. Chairman and Members.

Mr. Going has been a friend and supporter of mine for some, well, 32 years I've been in office. I've known him some years before that when he was a partner in one of the most outstanding engineering firms in Santa Clara County. He is also one of the most respected people in Santa Clara County. He's been involved in almost every community action in the City of Santa Clara, especially, which is his home as it is mine.

The press conference by the Sierra Club and the Planning and Conservation League I thought was outrageous in its distortion of Mr. Going's ability and his integrity and his general reputation.

I would recommend him for confirmation to this position in the highest possible terms, and I hope that you will

1 seriously consider what I have said.

2 CHAIRMAN LOCKYER: Thank you, Senator Alquist.

3 SENATOR ALQUIST: Thank you, Mr. Chairman.

4 CHAIRMAN LOCKYER: Mr. Going, did you want to start
5 with any initial statement about why you're qualified for this
6 particular job?

7 MR. GOING: Well, thank you, Senator Lockyer, Mr.
8 Chair, and Senators and staff members.

9 All I wish to actually say is that I have practiced
10 civil engineering in a firm that I founded in 1949, left in
11 1983, which was the practice of architecture, engineering,
12 planning, and surveying. I worked considerably in utility
13 areas, development of properties. However, all along, I've been
14 very interested in the concerns with our environment.

15 I left my firm and have been involved with Santa
16 Clara University, in re-routing a state highway around the
17 campus and the closing of seven streets to improve the campus.
18 And I do serve on two of the stream task forces, the San Tomas
19 and Saratoga, in our community for the protection of wildlife,
20 and the habitat, and the protection and improvement of those
21 creek rights of way which have a length of about 26 miles.

22 On my -- I've served some ten years on the Santa
23 Clara County Transportation Commission. And one of my prime
24 objectives has been to work out, through our Measure A program
25 in Santa Clara County, the banking of wetlands, and I'm very
26 committed to seeing that this continues. It has -- we do bank
27 wetlands in Santa Clara County, and we are very much requiring
28 in our deliberations the multiple replacement where any are

1 used, or crossed, or damaged, or replaced in any way.

2 I want to assure you of my interest in the position
3 to which I've been appointed, that I will judge every issue
4 fairly. And certainly in looking to -- the position I hold in
5 clean water is something that I have worked on for most of my
6 professional life and will continue to do so.

7 I'm sure there's some, I understand, some people that
8 do object to my appointment, and I would be happy to defer to
9 them at this time and respond later on, if that's deemed
10 appropriate.

11 CHAIRMAN LOCKYER: All right.

12 Are there questions from Members, or would you like
13 to hear additional testimony?

14 Is there anyone that would wish to comment either in
15 support? First, let me ask if there are any supporters present,
16 other than, of course, Senator Alquist, who's commented, who
17 would wish to make a comment at this time?

18 If not, ask if there are opponents or those that
19 would wish to express concerns that may wish to comment also?

20 MS. GRAVANIS: Good afternoon, Chairman Lockyer and
21 Members of the Committee. My name is Ruth Gravanis, and I'm the
22 Director of the Restoring the Bay Campaign. That's a special
23 project of Save San Francisco Bay Association. It brings
24 together 35 organizations interested in the San Francisco Bay
25 Delta estuary for better communication and going action on
26 issues of mutual concern.

27 We are here today to talk about the confirmation of
28 the appointment of Mr. Going. There are a number of other

1 people here today. There are also quite a few people who wanted
2 to come but who didn't come because of the last-minute change in
3 the agenda, and who felt they simply couldn't afford to leave
4 work and other obligations to come from the Bay region to
5 Sacramento twice. So, not everyone that we've been working with
6 is represented in person here today, but I would like, if it's
7 appropriate, to pass out an updated list of organizations and
8 individuals which share the concerns that we're going to be
9 raising today. I have another list as well.

10 One of the groups that was not able to be here
11 represented specifically is Save San Francisco Bay Association.
12 And what I would like to do is to call your attention to an
13 article in the recent issue of The Bay Watcher, which is their
14 quarterly publication. The article is entitled, "Is the Fox
15 Guarding the Henhouse?", and it discusses a fairly recent
16 decision made by the Regional Water Quality Control Board
17 regarding the Mayhews Landing case. This is a situation where
18 there was a proposal to develop housing on wetlands, and where
19 the Regional Board, ignoring the knowledge and recommendation of
20 its own staff, made a misinterpretation of the applicability of
21 CEQA to this particular case, had to be overturned by the State
22 Water Board.

23 We feel that we really are looking for appointees to
24 this committee who will show more knowledge of the applicable
25 laws, and when appropriate, will listen to the expertise of the
26 Regional Board staff.

27 The article also points out that Mr. Going did not
28 show the kind of respect for public participation, for

1 participatory democracy, which we see called for in the Porter-
2 Cologne Act.

3 The major point that I wanted to call your attention
4 today to, though, is the question of Mr. Going's qualification
5 for the particular seat which he occupies on the Regional Board.
6 As you know, the Porter-Cologne Act says that this seat should
7 go to someone with a special competence in areas related to
8 water quality problems.

9 We would very much like to know what that particular
10 special competence is, and how it was acquired, and how it has
11 been brought to bear upon the deliberations and the decision
12 making of the Regional Board.

13 A number of us have been monitoring meetings of the
14 Regional Board. We have not seen any evidence that Mr. Going
15 has called into consideration issues of water quality problems,
16 and how they come to bear on the particular permits being
17 applied for, or renewed, or the enforcement actions, or whatever
18 other item is on the agenda at that time. And we feel that it's
19 extremely important to explore thoroughly this issue.

20 We feel that because we need a balance on the Board,
21 because the water quality seats are so extremely important that
22 they should be filled by people who are going to constantly be
23 upholding the need for improving our water quality. This is not
24 what we have heard.

25 Other speakers will give more detail on the questions
26 I've raised.

27 Thank you.

28 CHAIRMAN LOCKYER: Thank you.

1 Mr. Livingston is next.

2 MR. LIVINGSTON: Good afternoon, Senators. My name
3 is Bruce Livingston. I'm the California Director of Clean Water
4 Action. Clean Water Action is a national environmental lobby
5 group with approximately one million members in 16 states. We
6 have 40,000 members in the Bay Area.

7 I have two major areas of concern here. We are -- I
8 am speaking in opposition to the appointment of Mr. Going -- the
9 confirmation of Mr. Going to the Water Board.

10 Two major issues that I want to speak to: one as to
11 his qualifications; the second is, I would like to flag the
12 issue of conflict of interest, whether it's resolved or not
13 today in his case.

14 On the qualifications issue, a letter was addressed
15 April 20th, 1994 to Mr. Going that addressed a number of issues
16 regarding qualifications and conflict of interest. And I'm
17 referring back to that somewhat without going into the details
18 of it.

19 We are concerned that being a civil engineer is not
20 sufficient to be a water quality experienced voice on this
21 Board. We feel that there needs to be a sense of advocacy for
22 water quality, and also a background in terms of water quality
23 as an economic benefit in terms of health and environmental
24 economic benefits.

25 May I address Mr. Going in terms of a few questions,
26 or can I offer suggestions of what you might address to him?

27 CHAIRMAN LOCKYER: This is the first time I've been
28 here for this, so I'm getting some direction.

1 MS. MICHEL: Questions are usually addressed through
2 the Chair so you don't end up with ongoing dialogue.

3 MR. LIVINGSTON: Thank you. I'm glad I asked.

4 CHAIRMAN LOCKYER: Me, too.

5 MR. LIVINGSTON: The two issues I want to concern are
6 -- I have in terms of water quality are in terms of wetlands and
7 in terms of site cleanup.

8 The first question that I am concerned about that the
9 Committee may wish to address is, that there are economic -- in
10 fact economic values to preserving wetlands and to restoring
11 wetlands. And I'm curious as to whether Mr. Going is aware of
12 those economic values? He has expressed, specifically in the
13 Mayhews Landing hearing last year, he expressed great concern
14 for the economic value of development.

15 The Campaign to Save California Wetlands, and Clean
16 Water Action, and other groups, have released numerous reports
17 over the last few years, emphasizing that wetlands are very,
18 very important for fisheries in this state, and even more so --
19 and there's a speaker to the fisheries issue following me -- but
20 even more so, there are economic values in terms of flood
21 control, and purifying water in our aquifers, and as we reach
22 large aquifers through wetlands, and in terms of purifying waste
23 water to a greater degree.

24 So, I am curious about his extent of knowledge about
25 those issues of the economic value of wetlands.

26 The second issue that I wish the Committee could
27 address is the level of cleanup that is necessary in the State
28 of California for remedial action sites for -- I think they're

1 normally referred to as the Cortese list, and commonly referred
2 to as Superfund sites. And the Water Board often has a very
3 strong role in those -- in that cleanup.

4 Of course, environmentalists advocate 100 percent
5 cleanup, and for that -- for us, that means drinking water
6 standards must be met after those cleanups.

7 So, those are a couple of the issues. I want to know
8 if this person can adequately address water quality issues, and
9 then I'd like to just have a minute on conflict of interest
10 questions.

11 CHAIRMAN LOCKYER: I guess the practice here is to
12 allow you to respond to both questions.

13 First, the economic value of wetlands and your own
14 thoughts about the subject?

15 MR. GOING: My own personal opinion, and what I have
16 practiced throughout my profession, is the protection of
17 wetlands and increasing our wetlands. Also, the cleaning of our
18 wetlands.

19 And I would like to mention the Mayhews Landing,
20 since the gentleman did bring it up. One of the reasons I felt,
21 along with the cleaning of the environment with the new channel
22 that was to be constructed which would have cleaned and purified
23 those wetlands that are now polluted because of certain dumping
24 that has occurred in the area where the development was
25 proposed, that was not my main reason because there was a
26 multiple replacement of wetlands and a conveyance of a large
27 amount of wetlands.

28 I feel wetlands are one of the most important

1 habitats for many of our, you know, birds, animals, insects,
2 mice and all, and I'm very supportive of this. I believe that
3 unless we protect those, the salinity will begin to back up into
4 our clean drinking water, and I certainly am opposed to that,
5 and I'm opposed to the cleaning of underground water in the
6 protection of those wetlands [sic].

7 CHAIRMAN LOCKYER: Senator Petris.

8 SENATOR PETRIS: We hear the term "wetlands" all the
9 time. Can you define that for me? What are wetlands? How are
10 they identified?

11 I'm asking a question on wetlands.

12 MR. GOING: I can give you my answer. The
13 definition, I don't believe, is a very clear definition.

14 I feel that wetlands are any area that will support
15 water, habitat, that is within a drainage area, whether they're
16 wet or dry. There are wetlands that could be susceptible to
17 water, to the holding of water, to the holding of any type of
18 water to continue the need that we have in this community to
19 support the habitat and to protect our underground drinking
20 water from the intrusion of any salinity and salt water.

21 SENATOR PETRIS: That doesn't mean that there is
22 sustained water on the surface over any particular period of
23 time?

24 MR. GOING: That is correct. Many of the areas
25 within Santa Clara Valley have no water in them, but they are
26 considered wetlands, and we respect them for that. They could,
27 at some point in time, generate water or they could hold water.
28 I don't think that's necessary to define, actually, wetlands.

1 SENATOR PETRIS: Who determines, if there's a
2 dispute, if I want to develop an area and it's opposed because
3 it's wetlands, who determine whether it's wetland or not? The
4 local agency involved with the permit process or --

5 MR. GOING: I think through the permit process, the
6 Corps; the permit process, the Corps.

7 SENATOR PETRIS: The Corps of Engineers?

8 MR. GOING: Yes.

9 SENATOR PETRIS: Thank you.

10 SENATOR ALQUIST: If I may, Mr. Chairman, just say a
11 word of rebuttal to this person's attack on Mr. Going.

12 As one of the partners in one of the most respected
13 engineering firms in the state, I'm certain that Mr. Going knows
14 far more about flood control and purification of water than this
15 individual here, who seems to think the only qualification to
16 being a member of one of these Water Boards is to be a member of
17 the Sierra Club.

18 Well, I belong to the Sierra Club, and I think it's a
19 very highly respected organization in many ways, but I think
20 it's under control of some of the more far-out members at the
21 present time who don't understand the necessity for
22 environmental and economic balance.

23 The economy of our state is in sad shape, and it
24 depends heavily on water because California is a water-deficient
25 state. And we'd better have people on these Water Boards who
26 understand the need of proper economic approach to some of these
27 problems, and you would be making a serious mistake if you
28 refuse confirmation of Mr. Going.

1 CHAIRMAN LOCKYER: Senator Petris.

2 SENATOR PETRIS: Maybe I wasn't listening, but I
3 didn't hear him mention the Sierra Club at all. He doesn't
4 represent the Sierra Club. He didn't say anything about them.

5 CHAIRMAN LOCKYER: There are going to be ten more
6 here, Senator Alquist, I think.

7 SENATOR PETRIS: Maybe you ought to wait for the
8 Sierra Club witness.

9 SENATOR ALQUIST: I'm quite certain, Senator Petris,
10 that you heard of the press conference and the attack on
11 Mr. Going that took place here about a month ago after his first
12 appointment.

13 SENATOR PETRIS: By this fellow here?

14 SENATOR ALQUIST: And certainly you have been -- if
15 your office hasn't been flooded with Sierra Club letters of
16 opposition to this appointment, then you're different from my
17 office because I have many that I consider totally
18 unsubstantiated and unknowing of the character and ability of
19 Mr. Going.

20 SENATOR PETRIS: Well, I think we ought to address
21 that when it gets here, but it doesn't mean that everybody who
22 opposes it is under the thumb of the Sierra Club.

23 This is a totally different outfit that I never heard
24 of before, and --

25 SENATOR ALQUIST: I never heard of this person,
26 either.

27 SENATOR PETRIS: Well, he didn't mention the Sierra
28 Club, so I think we ought to wait until the Sierra Club --

1 SENATOR ALQUIST: They're the ones that have been
2 leading the opposition.

3 SENATOR PETRIS: All right. Let's wait until they
4 testify and then we can question them.

5 CHAIRMAN LOCKYER: Mostly for purposes, I guess, of
6 my own amusement, I point out that the federal map of wetlands
7 include the garden on the roof of the Kaiser Building in
8 Oakland.

9 I suggest, as the gentleman has indicated, or no, I
10 guess Mr. Going indicated that there may be some need to work a
11 bit on the definition. That listing would suggest there is such
12 a need.

13 You had another point that I think you wanted to
14 make?

15 MR. LIVINGSTON: Could I just clarify a few items
16 here?

17 CHAIRMAN LOCKYER: Yes.

18 MR. LIVINGSTON: I am representing Clean Water
19 Action, which is the nation's largest water policy group and has
20 been in existence for 20 years. And we are one of over a dozen
21 groups at least, and you saw the list a little earlier, that are
22 involved in questioning some of the concerns here.

23 CHAIRMAN LOCKYER: Mr. Livingston, could I interrupt
24 that.

25 I know we talked a bit about the economic value of
26 wetlands. You'd also posed the question of Superfund cleanup.
27 Did we get a response?

28 MR. LIVINGSTON: Just before we leave the wetland

1 issue, reports that have been out recently show that we have
2 450,000 -- 454,000 acres only remaining in California of
3 wetlands. We've lost 91 percent of our wetlands, a greater
4 percentage than any other state.

5 Preservation and restoration of wetlands is crucial
6 in this state. Approximately \$10 billion a year in economic
7 value is generated through the various means that I mentioned
8 through wetlands in flood control and water quality control. It
9 has a tremendous economic impact, and that's what we expect a
10 water quality expert to realize and put that in the balance as
11 we look at development economic value as well, as part of the
12 economic cost benefit analysis that we want a water quality
13 expert to represent.

14 The question of cleaning up state Superfund sites,
15 Cortese list sites, is the other question I had on environmental
16 qualifications.

17 CHAIRMAN LOCKYER: Mr. Going, you may not have gotten
18 to this particular matter. Did you have any thoughts you'd like
19 to share with us on the Cortese requirements?

20 MR. GOING: I'm sure you're aware that many, many,
21 maybe most of the Superfund sites happen to be in the Bay Area
22 in Santa Clara County. I, for one, am highly supportive. In
23 fact, in a number of instances, I have been the vote that, along
24 with the rest of our Board, that has set up the program and the
25 funding in the cleanup of these.

26 And I believe, yes, that they should be cleaned to
27 every extent possible, that the water eventually that has been
28 penetrated with pollutants is cleaned enough to become potable

1 water.

2 CHAIRMAN LOCKYER: Senator Ayala.

3 SENATOR AYALA: I didn't quite get the name of the
4 organization you represent?

5 MR. LIVINGSTON: I represent Clean Water Action.

6 SENATOR AYALA: Clean Water Action.

7 MR. LIVINGSTON: Yes, sir.

8 SENATOR AYALA: What does that have to do with
9 wetlands?

10 MR. LIVINGSTON: The Clean Water Act itself includes
11 protection of wetlands as part of the surface waters of the
12 United States. That includes Section 404 of the Clean Water
13 Act.

14 There is a major national controversy now over how to
15 protect wetlands and how to restore wetlands. And as I said,
16 water -- our drinking water aquifers, often the wetlands filter
17 out toxics and pollutants and help to recharge those aquifers.
18 We have a severe aquifer problem; 40 percent of our water in
19 Southern California, for example, comes from underground
20 aquifers.

21 SENATOR AYALA: I don't recall anyone, in the over 15
22 years that I was involved with the State Water Project, oppose
23 wetlands. The only problem was that some of you folks who were
24 pushing for the wetlands don't tell us where the water's going
25 to come from, except from available water, and we're not going
26 to let you do that.

27 MR. LIVINGSTON: Right.

28 SENATOR AYALA: You've got to develop new water. We

1 all support wetlands.

2 So, I don't understand the problem between the Clean
3 Water Act and all these other good things or wetlands. Wetlands
4 are not a problem. Getting water for the wetlands is a very
5 severe problem. And until we get a new source, I don't think I
6 could support it.

7 MR. LIVINGSTON: Right.

8 I agree that water quantity is very important, but
9 also having the acreage available to deliver that water, too,
10 and to preserve that habitat, and that economic value in those
11 wetlands is also very important.

12 So, that's why we are concerned about it; it's
13 economy as well as the water quantity, which is, of course, the
14 major ongoing debate in the State of California.

15 CHAIRMAN LOCKYER: What else, Mr. Livingston?

16 MR. LIVINGSTON: Could I speak to the conflict of
17 interest issue very briefly.

18 And these are really questions that -- I do not yet
19 understand the full source of income and potential conflict of
20 interest that could be generated in the future. I have offered
21 this, the federal regulations on conflict of interest that apply
22 to state programs, which refer to the fact that, in Section (c)
23 here, it says that:

24 "State NPDES programs shall ensure
25 that any board or body which approves all
26 or portions of permits shall not include
27 as a member any person who receives, or
28 has during the previous 2 years received,

1 a significant portion of income directly
2 or indirectly from permit holders or
3 applicants for a permit."

4 And there's a 10 percent rule and a 50 rule.

5 So, we are -- what we are questioning is, and it's
6 still a question, we need to know more about the sources of
7 income of Mr. Going. Is he receiving 10 percent of his income
8 in the last two years, or could he in the future receive such an
9 amount of income, from permit holders, or through his firm from
10 permit holders, or through his stock holdings from permit
11 holders? That's a very small portion of your income.

12 And this is the federal law that allows the
13 delegation through this memo of understanding, memorandum of
14 agreement, between the U.S. EPA Region 9 and the State of
15 California. It allows that delegation of authority for NPDES
16 permits.

17 CHAIRMAN LOCKYER: Let's ask Mr. Going.

18 I know you are aware of this being potentially an
19 issue, and it seems to be sufficiently difficult for Mr. Burke
20 that consideration of his appointment has been postponed until
21 we have further legal analysis.

22 With respect to your own circumstances, can you
23 comment on the two rules, of the 10 percent and the 50 percent?

24 MR. GOING: I comply with all the rules, and the
25 answer is no. I don't receive any compensation of any
26 significant amount that would impact either the 10 or the 50
27 percent rule.

28 I provided my list of clients over the last two

1 years. Santa Clara University -- I can certainly name them --
2 Kaiser Foundation Hospital, and I do their government affairs
3 works in their new hospital in Santa Clara. I also have ongoing
4 relationship with Mission Trail Waste System, a garbage company
5 that serves exclusively the City of Santa Clara, and I do this
6 in aiding them in their negotiations for their contract.

7 I did abstain at one instance on a landfill that they
8 had a subcontract on through the City of Santa Clara. The
9 applicant, in the closing of the landfill, was by the City of
10 Santa Clara, and I did abstain just because I do receive some
11 compensation from Mission Trail, even though they are not the
12 applicant or the involved party.

13 My other --

14 CHAIRMAN LOCKYER: The federal law, as you know, is a
15 prohibition to serving on the board, not just a requirement of
16 recusal and abstaining on items.

17 MR. GOING: That's correct.

18 CHAIRMAN LOCKYER: To your knowledge, you have not
19 bumped into the 10 percent threshold?

20 MR. GOING: Not at all.

21 MR. LIVINGSTON: And just to make it clear, I'm
22 referring to his income as a civil engineering consultant, are
23 there any clients that are NPDES permits from that income, from
24 Ruth & Going, Incorporated, which he has been an owner in the
25 past and receives some income from currently as a seller or --
26 I'm not quite sure what the exact relationship -- and from RSE,
27 Inc., which owns a gas well.

28 And we're also -- so, those are the major concerns we

1 have in terms of conflict of interest. And we ask you to look
2 seriously at that because we do not want anyone sitting at the
3 Board who could throw our memo of agreement out into the winds
4 here with EPA.

5 CHAIRMAN LOCKYER: Thank you, sir.

6 MR. LIVINGSTON: Thank you very much.

7 CHAIRMAN LOCKYER: Let me ask Senator Campbell and
8 Senator Kopp, I believe, both wanted to address the issue before
9 us.

10 SENATOR CAMPBELL: Senator Kopp was waiting before I
11 was.

12 SENATOR KOPP: Thank you.

13 Mr. Chairman, Members, I speak of a perhaps different
14 realm from my knowledge of Mr. Going, which began about 1980,
15 during the time I was a member of the Metropolitan
16 Transportation Commission. He represent Santa Clara University
17 with respect to transportation issues that were a part of MTC's
18 responsibility.

19 I advise you, Mr. Chairman, Members of the Committee,
20 that he was unfailingly courteous, intelligent, helpful, never
21 arrogant, and always gave evidence of a person who was
22 scrupulous and very careful in anything he represented to
23 members of the Metropolitan Transportation Commission, including
24 myself.

25 And I would expect him to conduct himself in that say
26 way as a member of the Water Board, and that's a very important
27 set of qualifications and characteristics to bring to a
28 difficult board.

1 And so I appear in support of his confirmation, and I
2 thank you for your attention, Members of the Committee, and I
3 thank Senator Campbell for deferring to me.

4 CHAIRMAN LOCKYER: Senator Campbell.

5 SENATOR CAMPBELL: Thank you, Mr. Chairman.

6 I was intending to be here at the start --

7 CHAIRMAN LOCKYER: That's fine.

8 SENATOR CAMPBELL: -- and the other committee, as you
9 know.

10 I've known Mr. Going for a period of years in regard
11 to his work for the homeless. And it's not exactly an immediate
12 application to this appointment, I know, but it speaks to the
13 quality, and character, and compassion of the individual.

14 He has been, for the last three years, the President
15 of our second Harvest Food Bank, which just does miracles for
16 the homeless people of Santa Clara County.

17 To the extent I'm a judge of character and
18 compassion, Mr. Going has those in sterling quantities, and I
19 would urge the Committee to hold him in as high esteem as I do.

20 Thank you, Mr. Chairman.

21 CHAIRMAN LOCKYER: Thank you.

22 SENATOR PETRIS: I'd like to ask my friend and
23 colleague, I meant to ask Senator Kopp, too.

24 I don't think his character is at issue. We've had
25 wonderful reports, and about his training as an engineer.

26 The question here is, does he know anything about
27 water quality. The assignment specifically requires someone who
28 is an expert on water quality.

1 To you knowledge, have you dealt with him on those
2 kind of --

3 SENATOR CAMPBELL: No, nor do I represent that I
4 have.

5 My dealings with Mr. Going have been on the question
6 of the homeless and getting food for hungry people.

7 SENATOR PETRIS: And clean water at the same time?

8 SENATOR CAMPBELL: Hopefully that's right.

9 That is my full answer to your question.

10 CHAIRMAN LOCKYER: Thank you, Senator Campbell.

11 Mr. Going, did you wish to comment further on water
12 quality expertise?

13 MR. GOING: I think maybe I should, Senator, to
14 respond.

15 One of my first professional jobs, in fact it even
16 began when I was a student at Santa Clara University, I worked
17 for Charles Gilman at the University of California at Berkeley
18 and George Sullivan Hyde, a survey of San Francisco Bay. And
19 this was -- I started out just taking buckets of water out of
20 the Bay and having them tested.

21 But this is something that I started with, and from
22 thereon, I worked as a professional, as a consultant, to the
23 Rincon water treatment plant in Saratoga, California, to the --
24 at that time the Santa Clara County Flood Control and Water
25 District, which is now just a water district. I was a
26 consultant to them also in the transmittal of the water from one
27 end of the county to the other for the imported water that came
28 in from the Delta. And I've been a consultant throughout that

1 area.

2 My civil engineering, I can't say I'm an expert in
3 anything exactly, but I think as an engineer and what I have
4 worked on certainly gives me the experience that I need to judge
5 clean water and to work towards clean water in this state and in
6 our region.

7 SENATOR PETRIS: Thank you.

8 CHAIRMAN LOCKYER: Next witness.

9 MR. CAMERON: I'm Bill Cameron of the Sacramento
10 Chapter of the United Anglers of California. It represents
11 50,000 members in the state.

12 And since there is a direct relevance of good water
13 quality to good sport and commercial fishing, the United Anglers
14 of California doesn't believe that the confirmation of Mr. Going
15 to the San Francisco Bay Regional Water Quality Control Board
16 would be conducive to good fisheries. We base this in large
17 part upon his background.

18 I'm finished.

19 CHAIRMAN LOCKYER: Thank you for your comments.

20 Questions, Senator Craven.

21 SENATOR CRAVEN: If I may ask, what did he do in a
22 negative sense as it applies to fishing in his past?

23 MR. CAMERON: Well, looking over the things that he's
24 done, it doesn't tend to parallel the -- what fisheries would
25 be. It doesn't tell me that there's an awareness of the
26 fisheries.

27 It's an engineering background, and other items in
28 there, and businesses, and so forth.

1 SENATOR CRAVEN: You think that people who are
2 anglers --

3 MR. CAMERON: I would want to see somebody that's
4 somewhere in between them, not necessarily Sierra Club, but
5 somebody that there was evidence that there was some background
6 in there, some awareness.

7 SENATOR CRAVEN: Suppose he said to you, "I'm very
8 much interested in angling, fishing." Would you take that and
9 believe that?

10 MR. CAMERON: I would have to know -- I would have to
11 know if he belonged to any clubs that were of a conservation
12 nature.

13 SENATOR CRAVEN: Well, that's fine.

14 MR. CAMERON: I would give it consideration.

15 SENATOR CRAVEN: Very good.

16 Well, if he made a statement that, "I'm with you a
17 hundred percent," would that make you feel better?

18 MR. CAMERON: Well, I think so, if I could see other
19 items, I would look at the total picture.

20 SENATOR CRAVEN: What other items would you like to
21 see?

22 MR. CAMERON: Well, I'd like to see if he belonged to
23 any conservation organizations, any other things in the Bay Area
24 that are related to that.

25 SENATOR CRAVEN: Well, I think you have a feeling
26 that you have to have a hands-on with whatever you're discussing
27 here, or you're really on the outside.

28 I belong to the United States Humane Society, and I

1 have for years. I have no pets at all, you see, but I'm very
2 much interested.

3 And it's entirely possible that he's just as
4 interested in fisheries, or whatever, and not even be a
5 fisherman.

6 I have never fished in my life, and if my luck holds,
7 I never will.

8 [Laughter.]

9 MR. CAMERON: If I could say, in answer to that --

10 CHAIRMAN LOCKYER: After term limits, you know, it
11 might be --

12 [Laughter.]

13 MR. CAMERON: I would say that we're in an age right
14 now where our fisheries are falling very badly. The coho
15 fishing is just about disappeared in Oregon and Washington. The
16 striped bass fisheries have been reduced significantly.

17 And if I could go back historically to a time about
18 the turn of the century, we had the biggest white bass
19 commercial fishery in the Bay, inside the Bay. And what's
20 happened, what's decimated that fishery is the pollution in the
21 Bay.

22 So, anything that we could think of that will better
23 the quality of the Bay, we're all for.

24 SENATOR CRAVEN: I understand that.

25 MR. CAMERON: It's a crisis, and so we have to look
26 very critically at any appointments that will lead or point a
27 little to the off side where we're going to be concerned.

28 CHAIRMAN LOCKYER: Thank you, sir.

1 MR. GOING: Senator, may I say that the better part
2 of my diet is fish. I very seldom eat meat.

3 CHAIRMAN LOCKYER: Well, that might be bad; I don't
4 know.

5 MR. GOING: I don't know, but I certainly want to
6 protect our fishing industry.

7 CHAIRMAN LOCKYER: You're depleting the fishery.

8 MR. GOING: I went fishing once.

9 [Laughter.]

10 MR. FEINSTEIN: Mr. Chairman and Senators, my name is
11 Arthur Feinstein. I'm the Program Coordinator for the Golden
12 Gate Audubon Society. We have 55-6,000 members at present.

13 I have been with the Society for the Chapter for
14 around 15 years. I've served in the volunteer capacity as
15 President and Conservation Chair for approximately ten years
16 before being fortunate enough to get a job with them.

17 I'd like to talk on several issues. Before I start
18 in, I'd like to read a paragraph from a position paper from the
19 Planning and Conservation League. The Bay Area Audubon Council
20 is a board member on the Planning and Conservation League. They
21 have taken a position opposing Mr. Going, and I'll read just
22 this one paragraph which says that:

23 "Mr. Going is not qualified to serve
24 because he has exhibited a disregard for
25 the public's right to participate in
26 Regional Board proceedings. His comments
27 at the Board hearings indicate that he
28 sees himself as an advocate for the

1 applicant appearing before the Board,
2 rather than as a regulator attempting to
3 protect a public trust resource."

4 And I would like to speak on those --

5 SENATOR CRAVEN: Does that mean that he's denied an
6 opinion? Basically that's what you're talking about.

7 Your opinion was this way; his was that way. And are
8 you going to deny him that option?

9 MR. FEINSTEIN: Actually, I'll go into this, and I'll
10 explain what I mean.

11 SENATOR CRAVEN: Can't you go into it now?

12 MR. FEINSTEIN: Okay, I'll do it right now.

13 He has -- everybody is entitled to an opinion.
14 However, when you are a regulator on a public agency whose
15 responsibility is the beneficial uses of water and to protect
16 the water quality, one assumes that one will listen objectively
17 to all viewpoints, and then come down with a decision on the
18 side of water quality.

19 Now, in the meeting that I was at in September, 1993,
20 that treated with the Mayhews Landing wetlands project, which
21 you've heard before, the substance of that project was that
22 there was no project actually detailed. The City of Newark, in
23 which it would take place, had no plan from the developer for
24 that project.

25 There was a general plan in the city that had
26 indicated that on the site of this project, some development may
27 take place, but that before that took place further
28 environmental evaluation would be necessary.

1 Before the Regional Board -- the question was before
2 the Regional Board whether or not to approve water quality
3 certification for this project. In other words, would this
4 project have an impact on the waters of our Bay?

5 Again, there was no CEQA documentation on this
6 project; there was not even a project yet. Other than, there
7 was a Corps permit for this project, but again, there was no
8 details on the project.

9 Staff recommendation, and Regional Board counsel
10 recommendation, was to deny the project without prejudice simply
11 because there was not the available knowledge for the Board to
12 make a reasonable decision on whether there would be any water
13 quality impacts resulting from this project, since there had
14 been no environmental documentation.

15 SENATOR CRAVEN: Let me stop you at that point.

16 Are you referring to the knowledge inherent in a
17 trained professional, or the bunch of professionals or lay
18 persons who sit in judgment, collectively, not enough
19 information has been given them by staff?

20 MR. FEINSTEIN: No, I'm saying that there was not
21 enough information for anyone to make a determination on this
22 project because no one had investigated the project yet.

23 SENATOR CRAVEN: So, in effect, what I said last was
24 correct.

25 MR. FEINSTEIN: Yes.

26 SENATOR CRAVEN: Thank you.

27 MR. FEINSTEIN: Continuing with that, there was no
28 written environmental documentation. Staff recommended

1 temporary denial, basically.

2 There was considerable public testimony on the
3 project, recommending supporting the staff position of denying
4 the project.

5 And yet, the project was approved, with Mr. Going
6 acting -- and again, we have copy of the transcripts here --
7 Mr. Going acting more and more as a proponent rather than an
8 objective regulator of a project. In fact, at one point the
9 Chairperson of the Regional Board at that time -- let's see; I
10 don't know if I have it -- said:

11 "I would like to say that I'm a
12 little concerned about even the tone of
13 the comments to a certain extent from the
14 Board because we as a Board have to follow
15 the rules in which we are mandated. We
16 are not here to either represent or not
17 represent a developer."

18 Now, that's an unusual comment for a president to
19 make on a -- at a hearing, essentially reprimanding a board for
20 taking a proponent position on a project. And Mr. Going was one
21 of the most expressive and positive in terms of this, and let me
22 read another comment that he said:

23 "To me, this borders on an economic
24 situation and economy in an area that
25 needs it, and because of a technicality
26 like this, we hold up a project."

27 "Because of a technicality like this," well, what was the
28 technicality? The technicality was water quality certification.

1 Well, if that's how you view your role, if you view
2 yourself simply as -- water quality as a technicality in the way
3 of economics, then are you actually an objective regulator who's
4 out there trying to preserve our water quality? I submit that
5 that's not the case.

6 We have a statement right here where Mr. Going states
7 that he sees his role, water quality, as a technicality that's
8 getting in the way of economic development.

9 Well, first place, we argue, as Mr. Livingston said
10 previously to myself, that that's not the case. It's not
11 environmental interest's job. In the Bay Area, projects can get
12 through, jobs can get done, but you don't ruin your environment
13 at the same time because ultimately you ruin jobs in the long-
14 term.

15 Just a quick digression, we've been talking about the
16 value of wetlands, this is the study that Campaign for
17 California Wetlands put out on fisheries. If you look at this
18 chart, and I'll leave this with you -- I'm sorry I only have one
19 page -- so, you can see how this chart goes down. This is jobs.
20 This is jobs in our salmon industry. They went from 50,000 to
21 10,000 from 1978 to 1992; 40,000 jobs lost, not an insignificant
22 number if we're talking about economy.

23 Where'd those jobs disappear from? They disappeared
24 because of water quality and wetlands. That's what this report
25 says. This shows that wetlands, loss of wetlands, was the major
26 significant factor in the loss of 40,000 jobs.

27 So, when Mr. Going gets there and says "because of a
28 technicality we may hold up a project," well, because of the

1 technicality, we lose 40,000 jobs if we pass this project,
2 perhaps, in the cumulative impact component of it.

3 So, that's our concern here in terms of how Mr. Going
4 views his position as a regulator, and we have it in his
5 statements.

6 I wanted to touch briefly on one other element, which
7 is the way he views the California Environmental Quality Act.
8 Again at this hearing I was at, this was a question of whether
9 we needed an environmental impact report on this project. The
10 project was not even in existence yet. No design. There was a
11 design for mitigation. There was comments from resource
12 agencies on both sides of that design, but there was no project
13 design for the actual project itself, which includes other
14 things besides wetlands.

15 In any case, when the staff and the counsel proposed
16 that there should be more environmental documentation, Mr. Going
17 -- and I don't find it in the transcript, but I was there. I
18 specifically remember Mr. Going at one point saying: Why do we
19 need more CEQA documentation; we all know that all it deals with
20 is traffic.

21 And if you do look at what is in the transcripts,
22 you'll find that over and over again he refers to EIRs dealing
23 with traffic and other issues, but traffic.

24 It became very clear at that meeting that Mr. Going
25 considered CEQA something that only deals with whether we're
26 going to have congestion or not, not whether we're going to
27 actually find out what is the impact to our water quality in the
28 Bay.

1 I do not believe that this is the kind of person we
2 want on so important a board that has so little respect for the
3 California Environmental Quality Act that he says it's just a
4 technicality, again; who has so little regard for water quality
5 that he says this is just a technicality. What we need is jobs,
6 ignoring the fact that wetlands mean jobs.

7 We urge you to reject this nomination, not to confirm
8 the nomination.

9 CHAIRMAN LOCKYER: Thank you, sir.

10 Mr. Going, maybe it would be appropriate to ask you
11 to add any clarification to the transcript, if you would wish
12 to.

13 What was the "technicality" that was at issue in the
14 Mayhews Landing dispute?

15 MR. GOING: Well, thank you, Senator.

16 I have high respect for Mr. Feinstein, and I don't
17 want to argue or certainly show any displeasure, but I really
18 believe part of this was out of context.

19 I did look at the EIR that was prepared by the City
20 of Newark for their general plan. And then, in that EIR, there
21 was a specific area addressed, the Mayhews Landing area, for
22 development.

23 I've worked since 1972 in CEQA, and NEPA became the
24 law of the land in California in preparing and doing EIRs, and
25 during my professional time with my former company.

26 We took the general plan EIR, if it was specifically
27 addressed to an area for a project. That was acceptable.

28 Did not mean that there was not more requests that

1 would be made by the city for archaeological, for water testing,
2 for soil, for toxics, for traffic studies and all. And this is
3 what my reference was.

4 I felt, and our staff informed us, this might be the
5 only opportunity we had to look at this project.

6 I still believe that what I did was in the best
7 interests of the public. And I'll stand behind my decision. I
8 still feel that, number one, we look at, and I'm required to
9 look at, clean water, the environment, but also I think there is
10 some responsibility in the law that says you must look at the
11 economic impact.

12 CHAIRMAN LOCKYER: Tell me again what you thought,
13 what technicality were you addressing at the time?

14 MR. GOING: I understood the technicality was the
15 fact that we may not have another opportunity to look at the
16 CEQA document or an EIR on that project. That's what our staff
17 had told us.

18 Our staff also advised that we could go either way on
19 this. I was one of seven votes in favor of it.

20 And I think if you -- I know you have copies of the
21 transcript, and I don't think I spoke that much for the project.

22 CHAIRMAN LOCKYER: Wasn't the approval subsequently
23 reversed by the State Board?

24 MR. GOING: It was overturned by the State Board, I
25 think on the basis that a full EIR should be required to meet
26 the CEQA document.

27 But I still felt that my interpretation, since this
28 had been the policy that's been carried on in the Bay Area, and

1 cities in their general plans have been acceptable.

2 CHAIRMAN LOCKYER: Senator Petris.

3 SENATOR PETRIS: I have here a copy of the Code that
4 defines the duties of a regional board, and I'm referring to it
5 because sometimes the environmental protectors who come in are
6 severely criticized for being too lopsided, you know, in their
7 views. They just go overboard for the environment; they don't
8 take into account these other factors that you mentioned.

9 Now, as I read this, it says:

10 "Factors to be considered by a regional
11 board in establishing water quality
12 objectives shall include, but not
13 necessarily be limited, to all of the
14 following ..."

15 And it lists six paragraphs, five of which have to do with water
16 and water quality, and only one, which (d) -- (a), (b), (c), (d)
17 -- lists economic considerations. Well, I correct myself.
18 There's also (e) that says a need for developing housing, which
19 comes after that.

20 But the first is: "past, present, and probable
21 future beneficial uses of water." That seems to be the first
22 priority.

23 The second one is, "environmental characteristics of
24 a hydrographic unit."

25 The next one is, "water quality conditions."

26 And then (d), we have, "economic considerations."

27 So, I think all of us are aware that you can't ignore
28 the economic considerations, especially now when we're in a

1 terrible recession. We're all looking for ways to increase the
2 number of jobs.

3 But from the standpoint of the Code, it seems to me
4 the Board members are directed by the Code to consider all of
5 these items, and apparently, in that order.

6 Anyway, that's what I thought I'd bring to your
7 attention. You're familiar with that, I'm sure.

8 MR. GOING: Yes, I am, Senator. Thank you.

9 And through the Chair, I would like to respond.

10 I want you to know that I feel very strongly in
11 following that. And I believe I have shown that.

12 There seems to be only this one issue. I've
13 certainly supported in every action taken by our Board clean
14 water, the wetlands, and all the environmental issues that
15 refers to and that you have discussed.

16 SENATOR PETRIS: Thank you.

17 MR. PAPARIAN: Mr. Chairman and Members, I'm Mike
18 Paparian, and I do represent the Sierra Club.

19 In the interest of time, I'll indicate that I agree
20 with what the previous speakers have indicated. I'm sure
21 Mr. Going is a fine individual, and an appropriate appointment,
22 maybe, for many positions, but this isn't one of them.

23 California's precious water supplies and California
24 environment deserve better.

25 In looking over his record and qualifications, we
26 find that Mr. Going does have some questionable qualifications
27 for the seat he holds, and he has demonstrated a bias and
28 antipathy towards many environmental concerns.

1 We strongly urge opposition to his appointment.

2 David Nesmith from our San Francisco Bay Chapter, has
3 been monitoring many of the actions of the Regional Board and
4 wants to make some specific comments about some of the actions
5 that he's observed.

6 MR. NESMITH: Yes, thank you, Mr. Chair.

7 I do want to reiterate that, as Sierra Club
8 representative in the San Francisco Bay Chapter, I have no
9 complaints whatsoever. In fact, everyone that I have spoken to
10 about Mr. Going has emphasized his character and integrity and
11 honesty, and his dedication to community service, and his
12 involvement in the community, and his long-term dedication to
13 the public.

14 And I think, certainly, the Sierra Club has no
15 questions about your character and integrity.

16 I would suggest that a regional water quality control
17 board is an environmental first; an agency which has an
18 environmental mandate first.

19 And it is extremely important to all of us that the
20 San Francisco Bay remain as healthy as it is and become more
21 healthy, hopefully. To the extent that the San Francisco Bay's
22 environment continues to decline, additional water from Senator
23 Ayala's area and other upstream areas will be required to flush
24 out whatever poisons we succeed in putting into the Bay.

25 The Mayhews Landing case, I think, has become a
26 flash point because it was such a blatant example of a situation
27 where there were exactly three sentences in the Newark City
28 general plan regarding Mayhews Landing; three sentences.

1 On the basis of these three sentences, the Regional
2 Water Quality Control Board majority decided that they could
3 certify, provide water quality certification.

4 It's true, this was the Regional Board's only chance
5 to review this project. And to my way of thinking, they
6 squandered that chance by voting for a water quality
7 certification without any water quality information.

8 And during the October meeting, at which I was
9 present, Mr. Going went into some amount of detail as to his
10 frustration with the environmental concerns being expressed by
11 the public. Got more and more visibly restless about the amount
12 of environmental concerns that were being raised. And at one
13 point during a response by the nominee, he said that
14 environmentalists don't need paid jobs.

15 Well, I'm not sure what he is referring to. I know
16 that he's got a lot of involvement in a lot of other public
17 issues. I imagine that he understands that there are
18 volunteers and staff in a lot of different places where there
19 are public involvement, but I thought that that kind of comment
20 was -- had a dampening effect, or a potentially dampening
21 effect, on the concerns that were being expressed.

22 The final thing I'd like to say is that let's be
23 clear that the Regional Water Quality Control Board in the San
24 Francisco Bay Region is one of the potential pilot programs for
25 a federal-state partnership delegation of wetlands enforcement
26 responsibility. It is very important for all of us in the State
27 of California, if this federal-state teamwork should come to
28 fruition, that we have a Regional Board which can acquit itself

1 with integrity, and with a reasonable understanding of the laws.

2 And I think that a Regional Board with transportation
3 engineers on it is not going to be as well respected or as well
4 qualified to acquit themselves in this area as one that has
5 persons on it especially filling the seat of the special
6 competence in the area of water quality problems, as the present
7 nominee would represent.

8 SENATOR PETRIS: I have a couple of questions.

9 The first is, is this the only vote that you'd
10 consider negative that he has cast, or have you been tracking
11 other votes that he has cast during the time he's been on the
12 Board?

13 MR. NESMITH: This is the most egregious type vote,
14 if I could characterize it that way, vote, but there have been
15 many other votes, and there have been other comments that
16 Mr. Going has made more focused on the economics of the
17 situation than on the environmental concerns.

18 Now, I would be the first, as a card-carrying, paid
19 environmentalist, to argue that the environment can't improve
20 without economics improving also. But when you have a public
21 trust agency which is a resource based -- natural resource based
22 agency, I think it's very important to have board members who
23 can make decisions based on the environmental trusts that they
24 have been provided.

25 And there have been others. I don't go to every
26 meeting, but there have been other votes that have not been, in
27 my opinion, helpful to the environment.

28 SENATOR PETRIS: Was that a unanimous vote of the

1 Board?

2 MR. NESMITH: No, it was not. It was seven to two.

3 SENATOR PETRIS: Seven to two?

4 MR. NESMITH: Yes, the Chair and Otsea voted against.

5 SENATOR PETRIS: And I understand that was the first
6 reversal of the Board by the State Board?

7 MR. NESMITH: My understanding was, it was the first
8 reversal but, it was the Executive Director of the State Board,
9 the first time that he, on his own, you know, did it in the
10 whole state, sent it back in the whole state. This is the first
11 time it happened in the whole state.

12 SENATOR PETRIS: Not just the Bay Area, but anywhere.

13 Thank you.

14 CHAIRMAN LOCKYER: Have you concluded? Thank you
15 very much.

16 MS. D'ALELIO: My name is Carole D'Alesio, and I
17 represent a small environmental organization in Marin County of
18 about 4,000 members.

19 And I simply want to call your attention to a letter
20 that we previously wrote. It was dated May 18th, and we do
21 oppose the nomination of Mr. Going.

22 Most of what I would have to say would be in
23 agreement with what has already been said.

24 CHAIRMAN LOCKYER: We appreciate your willingness to
25 be nonredundant. Thank you very much.

26 MS. D'ALELIO: You're welcome.

27 CHAIRMAN LOCKYER: Other comments?

28 MS. HAMILTON: Good afternoon, Mr. Chair and Senator.

1 My name is Leslee Hamilton. I represent Silicon Valley Toxics
2 Coalition, a community, labor and environmental organization in
3 the South Bay that represents about 15,000 members.

4 And with organized labor on our board, we do have a
5 special consideration of balancing the need for jobs with
6 environmental restoration and preservation.

7 We are here to oppose the confirmation of Mr. Going
8 because of that special issue of competency in water quality
9 issues.

10 As you're probably familiar, the South Bay has more
11 Superfund sites than any county in this country. We have more
12 than 100 groundwater pollution sites.

13 It's imperative that whoever occupies the water
14 quality seat on the Regional Board be concerned about protecting
15 water quality and have that special expertise.

16 Thank you.

17 CHAIRMAN LOCKYER: Can you tell me what labor
18 organizations are members of your group?

19 MS. HAMILTON: Certainly. There are the Service
20 Employees International Union; the International Brotherhood of
21 Electrical Workers; the Central Labor Council, the AFL-CIO South
22 Bay Labor Council itself has a seat on our board; Communication
23 Workers.

24 CHAIRMAN LOCKYER: Thank you.

25 Others?

26 MS. MILLS: My name is Jane Mills. I'm hear speaking
27 for the Marin Audubon Society, Marin County Audubon Society.

28 I am just going to refer to our letter that we sent

1 to you. I think it speaks in greater detail that we support
2 essentially what has been said so far in opposition to
3 Mr. Going's nomination.

4 I just want to be very brief, and that's all I have
5 to say.

6 CHAIRMAN LOCKYER: Fine, thank you very much.

7 Good afternoon.

8 MS. REHM: My name is Lindsay Rehm, and I'm with the
9 Environmental Forum of Marin County.

10 We have written to this Committee in opposition to
11 Mr. Going's appointment. And I basically am in agreement with
12 the previous speakers who have questioned the wisdom of
13 appointed Mr. Going to the Regional Water Quality Control Board.

14 I'd like to urge you to reject this appointment.
15 Thank you.

16 CHAIRMAN LOCKYER: Thank you.

17 MS. RAFTERY: My name's Mary Raftery. I'm with
18 CALPIRG, the California Public Interest Research Group. We're a
19 statewide environmental, consumer, good government group. We
20 have 70,000 members in this state, about 20,000 of those reside
21 in the area that the Regional Water Board oversees.

22 The San Francisco Bay is one of the most polluted
23 water bodies in the country, and as a result, though we usually
24 work on statewide issues, we've become more involved in local
25 water quality issues there.

26 I'll be brief. We just share the concerns that the
27 other groups have already stated.

28 Thank you.

1 CHAIRMAN LOCKYER: Thank you very much.

2 MR. LARSON: Good afternoon. I believe I'm the final
3 speaker, but don't hold me to that.

4 My name is Denny Larson. I'm Campaign Director with
5 Citizens for a Better Environment in California. We are a
6 statewide environmental watchdog group specializing in pollution
7 prevention in the urban environment. We have about 15,000
8 supporters in the State of California, and many are users of the
9 beneficial aspects of San Francisco Bay and our other water
10 resources within the region of this state.

11 We are here, like the other folks today and groups,
12 to oppose the confirmation of Mr. Going because he's not
13 qualified for this seat. In his own statement to you earlier
14 today, he admitted that he's not an expert in water quality.

15 According to the document that states what his seat
16 should be for, it says, and I quote:

17 "having a special competence in the area
18 of water quality problems."

19 And we certainly have a lot of water quality problems in the Bay
20 Area that need an expert to get them cleaned up.

21 People have spoken about that quite significantly
22 before, and I won't go into that.

23 Quite simply, Mr. Going's record so far confirms that
24 he's also not qualified for that seat, and he is biased toward
25 the developers and industry on the Board.

26 We also, along with the Silicon Valley Toxics
27 Coalition, have special expertise in the health of the economy
28 as well as water quality and environment. We know and believe

1 that they go together, and that we need not sacrifice our clean
2 water for jobs. This has been documented in widely distributed
3 and reported documents by MIT, as well as the Bank of America.
4 And two years ago, we issued our own report called, "Clean, Safe
5 Jobs," which documented in the Silicon Valley how industries can
6 clean up their discharges and save money while doing it.

7 This led to a landmark agreement with the City of San
8 Jose to create low-interest loans to help industries do that and
9 keep 5,000 jobs in Silicon Valley.

10 Unfortunately, some people still want to paint
11 environmental groups as being anti-jobs and anti-economy. And
12 unfortunately, Mr. Going's statements so far at the Water Board
13 hearings have put him in that camp. It confirms that he has an
14 adversarial attitude and perspective toward not only
15 environmental groups but public participation in the process as
16 well, and a strong bias toward industry.

17 We're very, very concerned because currently, our
18 Water Board is already out of balance, and that Mr. Going's
19 appointment will further put the Bay Area's Water Board further
20 out of balance. That Board has already weakened copper
21 standards for the Bay.

22 We feel that this seat should be filled by an expert
23 in water quality in the cleanup and the restoration of San
24 Francisco Bay and our polluted drinking water, which are, as we
25 have heard today, major problems in our region.

26 Also, we're concerned because we feel that
27 Mr. Going's appointment could contribute further to paralysis of
28 our Board. Due to frequent recusals and potential conflicts by

1 other members of the Board, our Board was paralyzed for many,
2 many months on the issue of selenium poisoning in our Bay. We
3 had several Board members who held oil company stock and still
4 do, and for about eight months, we couldn't get a quorum on the
5 issue, or get any action.

6 According to a letter from Steve Richie to your
7 Committee, dated May 23rd, Mr. Going has recused himself twice
8 in his brief tenure already. We don't need any more
9 appointments on our Water Board that will cause any recusals.
10 We've already been paralyzed for a long time on these important
11 issues, as the man from the fishing group, the United Anglers,
12 stated, our Bay is in crisis.

13 Despite Mr. Going's statements to the contrary today,
14 which have sounded very good to us, his record just doesn't back
15 that up on the Board.

16 And in summation, we urge you to reject his
17 confirmation and send it back to the Governor to find us a water
18 quality expert who can help us clean up the Bay.

19 Thank you.

20 CHAIRMAN LOCKYER: Thank you.

21 Maybe I could ask, before you step down, your thought
22 as to the imbalance on the Board. Is that a consequence of the
23 kinds of slots that are designated under law to be filled, or is
24 there some other cause of concern?

25 MR. LARSON: Well, to speak frankly, we have had a
26 very low opinion of past appointments of the Governor, both
27 Governor's Deukmejian and Wilson, and we feel that this is not
28 an isolated incident where the Governor has picked someone to

1 fill a slot on the Board inappropriately.

2 And as I'd like to point out, there's a lot of people
3 here who have testified today who go to Water Board meetings.
4 None of Mr. Going's supporters, that I'm aware of, have been to
5 a Water Board meeting.

6 So, we are aware of how much talk we hear about jobs,
7 jobs, jobs, which is important, and we support that. We don't
8 hear, coming from our Board, talk about the need to protect
9 water quality. We didn't hear that in Mr. Going's statement in
10 either of these two hearings, either.

11 We believe it's the result of past poor appointments
12 by the Governor, and frankly, we've reached a point with these
13 last two appointments where we're very, very concerned, and
14 we're not going to take it any more.

15 As you may know, we haven't been here to testify at
16 past appointments, but we simply have reached a point with our
17 Water Board where we can no longer tolerate these type of
18 appointments. Our Bay is in crisis; our drinking water is in
19 crisis. We need better expertise, and expertise that focuses on
20 how we can clean it up.

21 CHAIRMAN LOCKYER: Mr. Larson, you also mentioned in
22 your correspondence that staff proposals on copper and selenium
23 were not acted on by the Board, but I think those predate
24 Mr. Going's services.

25 Is that correct?

26 MR. LARSON: Well, yes.

27 Just to clarify, the selenium problem was one where
28 there was no action due to a number of problems, one of which

1 was recusals by Board members.

2 The copper standard was not an inaction, but it was
3 an action taken by our Board and points to, again, this lack of
4 balance. That Board, which of course did not include Mr. Going,
5 did weaken water quality standards for copper pollution so that
6 they are less environmentally protective than the federal
7 standards for most of the water in the country. And that is
8 evidence to the fact that we feel the appointments in the past
9 have been out of balance.

10 In looking at Mr. Going's record, we feel that his
11 appointment will contribute further to this lack of balance.

12 CHAIRMAN LOCKYER: Questions? Senator Craven.

13 SENATOR CRAVEN: If I may, do you feel, aside from
14 Mr. Going, do you feel the other members of the Board are
15 qualified?

16 MR. LARSON: We haven't looked at that issue, and I
17 don't want to speak out on that. We do feel that there is a
18 lack of balance toward their charge to protect the environment,
19 yes.

20 SENATOR CRAVEN: When you use the term "lack of
21 balance," you mean a technical expertise in various fields in
22 which they are --

23 MR. LARSON: Frankly speaking, we don't find too much
24 of an advocacy or understanding of environmental issues on the
25 Board.

26 SENATOR CRAVEN: Do you think the Board should be
27 advocates?

28 MR. LARSON: I think there are supposed to be at

1 least one or two slots for that, as there are slots for industry
2 advocates on the Board.

3 SENATOR CRAVEN: Well, I would tend to disagree with
4 you. I think the Board sits there and follow regulations, and
5 they should neither be, you know, protestants or advocates, but
6 look at it very objectively. Now, I think that's certainly a
7 possibility.

8 The reason I asked you if you felt that they were
9 qualified, and I get a somewhat shaky response from you --

10 MR. LARSON: Well, I've stated clearly, we haven't
11 looked at their qualifications here, and they're not up for
12 confirmation, and we're not speaking about them.

13 SENATOR CRAVEN: That's true.

14 So, the very fact that you haven't looked into their
15 qualifications, and they're not up for re-appointment, you just
16 kind of leave them alone and you concentrate on him?

17 MR. LARSON: We would be happy to participate in an
18 oversight hearing on our Board. We think there are serious
19 issues that the Senate should look into, and we would support
20 you, Senator, in that.

21 SENATOR CRAVEN: That may very well be.

22 Would you serve on that Board?

23 MR. LARSON: I'd have to consult with my family, and
24 I'd have to look at whether I was qualified.

25 I have to state that I am not an expert on water
26 quality, and I --

27 SENATOR CRAVEN: That shouldn't stop you. Everybody
28 else that's testified --

1 MR. LARSON: No --

2 SENATOR CRAVEN: -- is probably in the same category.

3 MR. LARSON: Well, actually, that's what we're
4 testifying on. Mr. Going's seat is for special competence in
5 water quality problems.

6 If I were appointed to Mr. Going's seat, no, I don't
7 have that competence, and neither does he. Neither of us should
8 be up there.

9 CHAIRMAN LOCKYER: Who do you think has that? What
10 kind of work history or educational background would be
11 appropriate?

12 MR. LARSON: I think someone would have to have both
13 an educational expertise and a background of doing work in site
14 remediation, waste water cleanup, the type of specific issues
15 that come before the Board.

16 It's clear that Mr. Going is an expert in
17 transportation. That, unfortunately, is not an issue that the
18 Board deals with.

19 So, I think there should be a good deal of expertise
20 in both education and practice in water quality, site
21 remediation, waste water cleanup, pollution prevention which is
22 now recognized by state and federal EPA as the way to correct
23 some of these problems.

24 CHAIRMAN LOCKYER: Mr. Going, you mentioned in a
25 general way some experience that might be relevant, but how
26 about those specific topics of --

27 MR. GOING: Well, I --

28 CHAIRMAN LOCKYER: -- waste water reclamation, site

1 cleanup --

2 MR. GOING: I keep getting hit because I'm on
3 transportation, but the transportation issue includes the
4 concern and the replacements of wetlands. It includes cleanup.

5 I'm sure you're well aware of what Caltrans has gone
6 through, and I worked in that area where we, you know, have
7 uncovered not only archaeological findings at highways, but in
8 tanks where we've had to go in and do considerable clean up of
9 waste water, and clean up of toxics in the underground water
10 system. And I have been instrumental in that. In fact, I
11 located two of the instances in the Highway 82 project that we
12 spent a considerable amount of money seeing to it that it was
13 cleaned up before that highway could be completed.

14 I feel that I am as much an expert as anyone that I
15 know in the field. I have worked in the field. And just
16 because I have also experience in transportation, I don't
17 believe that should disqualify me, you know, from this
18 particular Board.

19 I would like also to mention that I'm the -- I have
20 had less excuses to step down from the dais in voting than --
21 only one other person has had less than I have had in the nine
22 months that I have served on the Regional Water Quality Control
23 Board.

24 CHAIRMAN LOCKYER: Thank you.

25 Is there anyone else who hasn't had an opportunity to
26 comment that would wish to?

27 Mr. Going, did you want to say anything in response,
28 in either general or specific ways, to comments that have been

1 made?

2 MR. GOING: Well, I'm hoping that the record and the
3 transcripts somewhat speak for themselves.

4 I did not tell people to go out and get jobs. What
5 my statement was, and it was clarified, there is confusion
6 because I was interrupted by the Chair, and I apologized to the
7 Chair for extending my time in trying to make a motion.

8 I did say that the gentleman had pretty much maligned
9 two of us on that Board after the vote. I said he had a paid
10 job, and he could support and house his family. That there were
11 many people in California that did not have housing, could not
12 feed and support their family, and that concerned me, and that
13 this would create maybe up to a thousand jobs for the
14 construction of the project.

15 But that was not upper most in my mind. Upper most
16 in my mind was mainly the environment, the cleaning of those
17 wetlands, the preserving, and the multiple replacement wetlands,
18 as well as the conveyance of the wetlands that were not going to
19 be used.

20 I'm sorry that I am sort of maligned over one
21 particular vote in one project, where I was one of seven votes
22 in favor.

23 I have supported in every other way, in every other
24 action on the nine months of my time on that Board, and
25 certainly have pointed out in many instances my concern for
26 flumes, and underground traveling of flumes that have toxic in
27 them into our drinking water.

28 Most recently, I just pointed out my concerns of

1 Coyote Creek in Santa Clara Valley, because the UTC site in
2 Coyote, that is a Superfund site. It had not been addressed,
3 and I was concerned about it. My -- it was answered
4 satisfactorily and a permit was issued.

5 I'm very much interested and, I think, very much
6 concerned, and I believe I have the experience, and the
7 background, and the education to fulfill my obligation in this
8 position.

9 CHAIRMAN LOCKYER: Senator Petris.

10 SENATOR PETRIS: Mr. Chairman, there's been a
11 tremendous amount of opposition from a lot of different
12 organizations, and there's been reference to the voting record.
13 And Mr. Going himself refers to the record.

14 We haven't had a chance to see it, at least I
15 haven't.

16 I would like to see thing go over at least until our
17 next meeting, and I invite those both for and against to send us
18 the voting record. I guess we can get it from the agency, but
19 that would be helpful. Then, it would give us time to check out
20 the economic factor, and maybe whether or not there's a
21 conflict.

22 We have your statement that whatever your income is,
23 is certainly below the 10 percent, to say nothing of the 50, but
24 you're not retired so that wouldn't apply to you, the 50; would
25 it?

26 MR. GOING: I'm beyond age 65.

27 SENATOR PETRIS: Is that how it goes, based on age?

28 MR. GOING: I think it's 60.

1 CHAIRMAN LOCKYER: Sixty with pension income, and 10
2 percent, any form of income.

3 SENATOR PETRIS: Full-time, yeah.

4 So, I think we would benefit from a little more time
5 on this. I'd like to make that suggestion.

6 CHAIRMAN LOCKYER: It's my understanding that that's
7 customary practice, to provide us a week or perhaps longer, but
8 at least a week, to review any specific information that members
9 of the public may wish to send us, and for Mr. Going to respond
10 to such.

11 If there's no objection, that will be the order.

12 MR. GOING: Mr. Chairman, I will be out of town next
13 week.

14 CHAIRMAN LOCKYER: We can schedule it at your
15 convenience. I don't think you'd need to have further testimony
16 unless something pops up that suggests that that would be wise,
17 but we can schedule it so that you're able to participate if you
18 need to.

19 MR. GOING: Thank you, Senator. Thank all of you
20 Senators. Thank you for a thorough discussion.

21 [Thereupon this portion of the
22 Senate Rules Committee hearing
23 was terminated at approximately
24 3:50 P.M.]

25 --oo0oo--
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SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

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PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: The meeting will come to order.

I have received a letter from Senator Frank Hill that reads as follows:

"I hereby submit my resignation as Senator for the Twenty-ninth Senate District to become effective immediately upon an official judgment of conviction by the United States District Court of the jury's verdict in the case of UNITED STATES OF AMERICA V. FRANK C. HILL."

Senator Hill just provided us with this letter of resignation.

We have tried to clarify exactly what timetable or dates are involved in the resignation action, and because of that, we've asked the Leg. Counsel to provide us with explicit opinions as to the relevant timetable and date.

We especially wish to learn which motions are pending before the Court, and whether there is a timetable with respect to those motions that would clarify the explicit date of resignation if Senator Hill is unsuccessful in his efforts to seek relief from the verdict.

Are there comments at all from other Members?

SENATOR AYALA: Senator Hill's letter that you just read, he says:

"to become effective immediately upon an official judgment of conviction by the ... District Court"

1 What does that mean? I thought he was already
2 officially convicted.

3 CHAIRMAN LOCKYER: That's exactly what we've asked
4 our lawyer to provide us with information about.

5 Unfortunately, Mr. Gregory is ill today, and so we've
6 had a little bit of a problem in getting a definite official
7 opinion. We would hope to do that by Monday or Tuesday.

8 The best answer, as an informal opinion, seems to be
9 that the jury has rendered a verdict, but the judge has to
10 provide some final action on that, and that motions have been
11 made by Senator Hill's attorneys that would vacate or reverse
12 the verdict. The judge seems to be required to act on those
13 motions, that we think they're currently pending before the
14 Court, but we would like to know exactly when that would be, or
15 what it means as a legal matter.

16 Other comments or questions?

17 SENATOR AYALA: In his letter, he mentions nothing
18 about that particular point, where he says that if the judge
19 refuses or denies any of the three appeals, he would then resign
20 immediately. His letter doesn't say that.

21 CHAIRMAN LOCKYER: Comments of that sort have been
22 made, and I prefer to get them explicit and in writing and well
23 understood.

24 But just in informal discussion, there were comments
25 by Senator Hill that suggested that he has no intention of
26 dragging this on. He has no intention of putting the
27 Legislature through the unpleasantness of casting a vote on
28 expulsion; that he just would like the rather brief opportunity

1 to vacate the verdict if he can, and that that should not take
2 an undue amount of time.

3 SENATOR BEVERLY: Mr. Chairman, my only comment is, I
4 would agree with your suggestion that we not act without full
5 information as to the legal ramifications of the language in
6 this resignation.

7 CHAIRMAN LOCKYER: Yes, I agree.

8 SENATOR AYALA: Is there a time -- of course, you
9 can't tell a judge, you know, how long he should take, but what
10 if the judge decides to go on a month, two months, three months,
11 before he renders his verdict?

12 CHAIRMAN LOCKYER: Well, that's what we're trying to
13 find out, whether the judge has established a specific schedule,
14 and what it is, and --

15 SENATOR AYALA: But can we say that it would be
16 effective within ten days, unless the judge rules otherwise?

17 CHAIRMAN LOCKYER: That would be, I think, an
18 appropriate action once we get this information, Senator.

19 I would expect, if the judicial timetable is
20 unnecessarily slow, there may be a need for the Legislature to
21 act independently, but let's find out first exactly what the
22 judicial timetable is, since there seems to be some question
23 about the matter.

24 Any further questions?

25 Thank you. We will adjourn, then, and resume
26 probably Monday, if we can get these matters clarified by Monday
27 afternoon Rules Committee meeting.

28 SENATOR BEVERLY: The regular meeting?

1 CHAIRMAN LOCKYER: The regular meeting is set for
2 Monday, yes.

3 [Thereupon this portion of the
4 Senate Rules Committee hearing
5 was terminated at approximately
6 2:25 P.M.]

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P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN LOCKYER: Senator Bergeson, we're ready for your introduction.

SENATOR BERGESON: Thank you very much, Mr. Chairman and Members of the Committee.

It's a pleasure for me to be able to introduce to you Mary Jane Forster, who is the Governor's appointee to the public member of the State Water Resources Control Board.

It has been my pleasure to know Mary Jane for many, many years. Having shared many responsibilities dealing with local community efforts, I've known her to be a tremendously well respected member of the community and an activist in many ways. She was sought out for her leadership in many capacities, but she chose to become more identified with the issues of water resources.

So, she has spent many, many years in becoming familiar with these issues, and in fact, is a well recognized expert in the area with anything that you'd care to discuss with water. She's there to tell you what she knows, and she does have a tremendous reservoir of knowledge.

She's worked for over 20 years, both as an educator and as a public outreach specialist on issues that have been related to water resources. And for the last decade, she has worked as a regulatory legislative specialist, assisting county government, and cities, and water districts in complying with drinking water regulations that are mandated by federal and state laws.

1 Her experience as a ten-year member of the San Diego
2 Regional Board has given her a keen insight on the clean water
3 program in San Diego, as well as the Clean Water Act.

4 During her brief tenure with the Water Resources
5 Control Board, she has shown her commitment to the
6 reauthorization of the Clean Water Act, and has illustrated to
7 everyone that she is one of the state's brightest leaders when
8 it comes to state water policy.

9 I strongly urge all of you to become very familiar
10 with her record, and I strongly urge you to give her full
11 support and would hope that you would agree to see that she
12 goes forward for confirmation. She's an outstanding candidate,
13 and she's very worthy of your consideration.

14 Thank you.

15 CHAIRMAN LOCKYER: Thank you very much, Senator.
16 Your opinions are weighty and informed, and we appreciate your
17 appearance.

18 I think you're probably still in another committee
19 meeting at this time.

20 SENATOR BERGESON: I'll be across the way if need any
21 more personal references.

22 CHAIRMAN LOCKYER: Okay.

23 Good afternoon.

24 MS. FORSTER: Good afternoon.

25 CHAIRMAN LOCKYER: It looks like you've come with a
26 prepared statement that you might start us with about your
27 qualifications. If you would do that, please.

28 MS. FORSTER: Sure, thank you.

1 Chairman Lockyer and Members of the Committee, it's a
2 privilege and honor for me to have this opportunity today to
3 share with you my qualifications to serve as the public member
4 of the State Water Resources Control Board.

5 I thought to help give you a brief sketch of my life,
6 I would break it up into short comments on my personal
7 background and my professional background.

8 I'm a graduate of the College of Mount Saint Vincent
9 in New York. I have a degree in social sciences.

10 I'm the mother of four children -- two boys, two
11 girls -- and they're seventh generation Californians.

12 I've been very active in my community. I've been a
13 Planning Commissioner in San Juan Capistrano. I started the
14 Cultural Heritage Commission and served as a Commissioner for
15 five years. I helped restore five historic buildings, two were
16 used by the Native American Indians.

17 I've been a supporter of the South County Health
18 Clinic, which gives a lot of medical care for people who can't
19 afford. I've been a keen supporter of battered women shelters,
20 two of them in Orange County.

21 Professionally, I came to California to teach for the
22 Los Angeles City School system. The Urban League of Los Angeles
23 hired me in 1965 to pilot test the very successful Head Start
24 Program.

25 I'm a writer and publisher for water education
26 materials used for kindergarten through college levels, and I
27 did that under the work of the Municipal Water District of
28 Orange County. I was a governmental affairs manager for

1 regulation and legislation with the Municipal Water District.

2 I served as a member of the San Diego Regional Water
3 Quality Control Board from 1983 to 1993. My water reclamation
4 leadership, my leadership in trying to have secondary treatment
5 for all coastal waters, except San Diego, which is under a court
6 decree, and my help on starting our underground tanks program,
7 our toxic sites, our leaking landfills, are some of the things
8 that I point to in the San Diego Board that I worked very hard
9 on.

10 In 1990, I had the honor to be appointed to the
11 United States Environmental Protection Agency's National
12 Drinking Water Advisory Council. On that Council, I helped set
13 the safe drinking water standards for 60 inorganic chemicals,
14 also did the lead and copper rule, the groundwater protection
15 rule. We conducted the National Pesticide Survey, and we were
16 involved in the groundwater disinfection rule when I left the
17 Board.

18 So, that's sort of a glimpse of my professional
19 career.

20 This year on the State Board, I've acted as the lead
21 for different state agencies on issues related to the
22 reauthorization of the Clean Water Act. This very important law
23 governs the water quality of the waters of the United States.

24 I represented the state in Washington, D.C. on two
25 visits. The first was a briefing for California U.S. Senators
26 and their staff writers, and the second was a briefing for the
27 Congressional committees -- the Public Works members and the
28 Merchant Marine Fisheries members, plus their staff, plus all

1 the House writers on the bill -- setting forth what California
2 thought would make a better, improved Clean Water Act. Under
3 Panetta's bill, we get 20 percent more funding, which is very
4 needed for our waste water treatment plants. We're working hard
5 to take care of the abandoned mine issues that are plaguing the
6 San Francisco Bay. We're trying to get better federal laws to
7 increase and enhance water reclamation, and we're working on
8 wetlands issues.

9 I've been the liaison for the Los Angeles and Santa
10 Ana Regional Boards this year. I've been active on the Santa
11 Monica Bay Restoration Project and the San Diego Bay Interagency
12 Panel.

13 I've been traveling around the state this year,
14 talking about the watershed approach for resources. Watershed
15 is supposed to be the new, integrated holistic way to better
16 protect our waters. The state has a real active Non-point
17 Source Control Program that I've been the Board spokesperson
18 for.

19 So, I would like to close in saying that it's a real
20 honor for me to have been selected for this position. I feel
21 that the public member is a person that has the honor to
22 represent all Californians, and I really believe all
23 Californians want a clean planet, and a clean environment, and
24 it's with these closing comments that I welcome any questions.
25 And again, thank you for having this hearing.

26 CHAIRMAN LOCKYER: Thank you for your opening.

27 Senator Ayala, did you wish to --

28 SENATOR AYALA: I have a few questions when it's time

1 for that.

2 CHAIRMAN LOCKYER: Go ahead.

3 SENATOR AYALA: Ms. Forster, as you know, the Central
4 Valley and Southern California pretty much depend on the
5 transfer of water from the Delta, the San Francisco/San Joaquin
6 Delta.

7 What general approach do you favor for limiting or
8 mitigating the impact of diversions from the Delta? We know
9 that we can't continue doing that, but we must have some of that
10 diversion in order to survive in Central and Southern
11 California.

12 So, what is the general plan that you or the Board
13 has for the mitigation of those diversions from the Delta?

14 MS. FORSTER: Well, as you know right now, Senator,
15 we're going through the Bay/Delta hearing process.

16 SENATOR AYALA: I'm sorry?

17 MS. FORSTER: We're going through right now the
18 Bay/Delta hearing process. We're having our -- what we call the
19 Triennial Review, and that's where we look at what's happening
20 in the Delta. And we're trying to develop a new water quality
21 control plan that will address how we're going to meet all the
22 competing needs of the Delta.

23 So, these workshops have been going on now for
24 several months. Our last one is in July; we have one, maybe, in
25 August if it's needed. And hopefully, in these one-day
26 workshops, we've had Californians coming from all over with
27 several different options on how we're going to meet these
28 needs, and hopefully in the December, we come to closure on how

1 we're going to make it work this time, how we're going to have
2 water for the cities, how we're going to have water for the
3 farms, and how we're going to to have water for the environment.

4 SENATOR AYALA: The Board is having public hearings
5 currently on the standards for the Bay. We have standards for
6 the Delta, but now the courts have directed that we also set
7 standards for the Bay.

8 Are you having hearings on that around the state?
9 Where are you having the hearings to determine what those
10 standards are to be?

11 MS. FORSTER: In the Bay/Delta hearing process,
12 Senator, the standards for the Bay are included. The water
13 quality plan is for the whole Bay/Delta Estuary, and that
14 includes San Francisco Bay. So, it's all within the work that
15 we have commenced on and are trying to complete by the end of
16 the year.

17 SENATOR AYALA: The Board will complete their
18 strategy for underground water quality, and so forth, by another
19 year? Is that what you said?

20 You're having hearings now. When will they come to
21 a conclusion?

22 MS. FORSTER: Right, we're having -- at the end of
23 the year.

24 SENATOR AYALA: End of the year, okay. And does the
25 Board intend to seek legislative approval of that strategy?

26 MS. FORSTER: I can't -- I don't know that right now,
27 Senator. We'll just have to see how it all plays out.

28 SENATOR AYALA: I don't think you have to, but I

1 wondered if you were going to plan on doing that.

2 What is currently the worst water quality program in
3 the State of California? Where does that exist?

4 MS. FORSTER: Coming from Southern California, I was
5 not aware of what I think might -- I've learned this year that
6 one of the worst one -- there's a lot of water quality
7 problems. I have found out through my work on the Clean Water
8 Act that the acid mine drainage coming out of abandoned mines
9 that is going into the tributaries and estuaries and rivers of
10 water that make it into the Bay are doing tremendous damage in
11 copper contamination to San Francisco Bay. And I was unaware of
12 that, and I think that's really a significant problem, and our
13 Board is working really hard to try to figure out how to relief
14 some of that impact.

15 SENATOR AYALA: What about the New River coming out
16 of Mexicali into Calexico? What shape is that in?

17 MS. FORSTER: Well, we have initiatives working on
18 that. I know that we funded money to help with Salton Sea this
19 year.

20 Salton Sea, all the people in that area have
21 organized and are working on New River, Salton Sea, and in
22 completing all the lining of their canals to help with their
23 evapotranspiration and their water transfer.

24 So, a lot of work's being done on Board of Sanitation
25 issues.

26 SENATOR AYALA: Well, I know that problem is a
27 federal issue, because it's an international boundary there that
28 crosses, so I don't know how much we can do from the state

1 level.

2 What do you consider the major water issue in
3 California today, other than --

4 MS. FORSTER: Supply.

5 SENATOR AYALA: -- shortage, drought, that sort of
6 thing, which we can't control.

7 MS. FORSTER: Probably supply. People want supply.

8 SENATOR AYALA: Supply.

9 MS. FORSTER: People want reliability. We have
10 growing populations, shrinking water supplies. How do we
11 distribute it fairly. It's a major problem.

12 SENATOR AYALA: Do you support building any water
13 holding facilities to be released in times of need south of
14 Tracy, the pumps there?

15 MS. FORSTER: We just permitted Los Vaqueros
16 Reservoir.

17 SENATOR AYALA: You did what?

18 MS. FORSTER: We just finished, our last Board
19 meeting, we just finished the permits on Los Vaqueros Reservoir
20 in Contra Costa. That's the largest off-stream storage that's
21 been built in a long time.

22 So, that's always been one of the options for
23 solution, is off-stream storage, so in years of wet years, we
24 can collect the water so we have it banked for dry years.

25 SENATOR AYALA: I've often wondered what these folks
26 who are opposed to completion of these water facilities, what
27 are their answers when all these cities get flooded during the
28 flood season, when we could capture that water and release it

1 down where it's needed, when it's needed? Yet, we would have
2 some flood control over and above that.

3 I don't know where these people come from that refuse
4 to accept that premise, because unless you can, you know,
5 capture that water when you have the flooding season, it just
6 goes out to sea, serving no purpose.

7 If we could capture it, and release it in due time
8 when it's needed, I think it'd be a great asset to the State of
9 California.

10 I have no more questions, Mr. Chairman.

11 CHAIRMAN LOCKYER: Thank you.

12 There probably will be others.

13 Let me ask if there are people who wish to comment in
14 support of the nomination? Please come on up.

15 MR. DILLON: Mr. Chairman and Members, Mike Dillon
16 representing the California Association of Sanitation Agencies.

17 We've known Mary Jane for 10 or 15 years, or maybe
18 even longer, and are familiar with her qualifications. We think
19 she has -- is exceptionally well qualified. She's a problem
20 solver and looks for consensus, which in this business, you
21 often need. She's a very hard worker and has always been
22 accessible, will make time to discuss the issues that are
23 important to our industry as well as others of interest.

24 I think her experience is unique in that she's had a
25 lot of first-hand experience at the local level, knows what our
26 problems are. She also has had state experience and knows the
27 issues at the federal level as well.

28 So, we would highly recommend that the Committee

1 approve her.

2 Thank you.

3 CHAIRMAN LOCKYER: Thank you.

4 MS. JOHNSON: Mr. Chairman, honorable Members of the
5 Senate Rules Committee, my name is Judy Johnson.

6 I asked Mary Jane Forster if I could speak on her
7 behalf today. I had two reasons. First, Mary Jane Forster is
8 being criticized for her work on the San Diego Regional Water
9 Quality Control Board. I believe unfairly so.

10 I served with her on that Board for six years. I
11 still serve on that Regional Board. In fact, I am honored by my
12 colleagues to be the Chairman of our Board this year.

13 Second, I firmly believe that Mary Jane Forster is a
14 terrific nominee for this particular position: the public
15 member of the State Water Resources Control Board.

16 Regarding my first reason, the San Diego Regional
17 Board, Mary Jane Forster has broad shoulders and is a strong,
18 intelligent woman. She participated fully in the decision
19 making of our Regional Board.

20 But it must be remembered that we are a Board of nine
21 individuals, strong in our own right, intelligent, sometimes
22 opinionated, and always willing to speak our minds. A Regional
23 Board is a panel of citizens, charged to look at all the
24 information, listen to those who come before us, and then
25 collectively to make the best decision that we can.

26 If there was only way to protect the water quality of
27 the State of California, and that was by the numbers, then this
28 Legislature would not have needed to establish citizen panels.

1 Someone gave me a copy of the computer message which
2 solicits letters and cards be sent to you, Mr. Chairman.
3 Obviously, the bits and pieces of information taken out of
4 context were designed to inflame our senses.

5 The issues before a Regional Board can be complex,
6 frustratingly slow to be resolved, and dynamic to the point of
7 wanting to tear your hair out. You can pull anything out of
8 context, as the opponents to Mary Jane Forster's nomination have
9 done.

10 Regarding my second point, honorable Members of the
11 Senate Rules Committee, you have before you a woman of high
12 integrity who brings a different palette of skills to the work
13 of the State Water Resources Control Board. I believe, and I
14 admit to my bias because I know this woman, that Mary Jane
15 Forster is perfect for this position. She will listen to all
16 who come before the State Water Resources Control Board. Quite
17 frankly, she finds different opinions interesting and worth
18 exploring. This is refreshingly unique.

19 Yet, she also has the experience to understand the
20 complex water issues which face us. This ability to listen,
21 combined with the strength and knowledge of the issues, means
22 that she has the ability to make the process bend to the will of
23 the people. This, in my opinion, is exactly what the public
24 member is supposed to do.

25 I hope this Committee will see that this woman should
26 continue her service to the citizens of the State of California,
27 and that you will unanimously recommend her confirmation to the
28 California Senate.

1 Thank you.

2 CHAIRMAN LOCKYER: Thank you very much.

3 Senator, Justice --

4 SENATOR COLOGNE: Whatever.

5 Mr. Chairman, Members of the Committee, as the author
6 of that famous or infamous Porter-Cologne Water Quality Act,
7 which is administered by the State Board --

8 CHAIRMAN LOCKYER: What happened to Porter?

9 SENATOR COLOGNE: -- with my good friend Carley
10 Porter, bipartisan effort, I come here in support of Mary Jane
11 Forster.

12 I've known her now for about ten years. Since I left
13 the bench, I came back to look and see what that Act was doing
14 for the State of California, and I was very pleased with what I
15 saw.

16 You may not think it's done everything that it could
17 do, but let me tell you, it has done tremendous amount of good
18 in cleaning up the waters of this state. And it's done by the
19 energetic efforts of people like Mary Jane Forster.

20 She's been on that San Diego Regional Board, and you
21 know, you give them a lot of very difficult decisions to make.
22 Mary Jane has stood up to it. She's been one that's supported
23 the concept that penalties alone are a good idea, but the real
24 solution to all these problems is cleaning up the waters of the
25 State of California. And she's been a strong advocate of that.
26 Penalties, yes, but not to the expense of the people in the
27 district who have to do the job. And in San Diego, that's what
28 she's done down there on the Board. She's provided the

1 outspoken support of cleaning up the waters of the Bay.

2 The City of San Diego for years has been neglecting
3 that problem, but the waters of the Bay, I'll tell you, are a
4 lot better today than they were when we passed that Act in 1969.

5 Mary Jane Forster is not only a good representative
6 of the public at large in this regard, but she is also one who
7 is very knowledgeable in this whole situation. There's nobody
8 who understand water quality any better than Mary Jane. She has
9 dedicated herself to learning the issues, understanding the
10 issues, and coming up with the right decisions.

11 And I can tell you, I wholeheartedly support her
12 elevation from the Regional Board to the State Board.

13 CHAIRMAN LOCKYER: Thank you.

14 Is there anyone else who would wish to comment?

15 MR. WITT: Honorable Chairman and Members of the
16 Committee, I am Ken Witt, the immediate past President of the
17 Association of California Water Agencies, better known as ACWA,
18 currently Board of Directors of both the Municipal Water
19 District of Orange County and the Metropolitan Water District of
20 Southern California.

21 As you are well aware, ACWA members serve 90 percent
22 of all of the agricultural and urban water in California.

23 Mary Jane Forster has worked with me for two decades.
24 What's that, 20 years? Holy mackerel. Two decades in the water
25 industry.

26 Her knowledge of water quality regulations was
27 unsurpassed in the water community. She has been appointed by
28 two Governors and one President to councils that oversee water

1 quality. Her pleasant manner, coupled with her knowledge, led
2 me to appoint her as Chairman of ACWA's Environmental Committee,
3 a member of ACWA's Water Quality and Legislative Committees, and
4 a leader in ACWA's annual Washington, D.C. Delegation, Chairing
5 the Clean Water Act Task Force. The drafters of the Clean Water
6 Act in Washington, D.C. know and highly respect Mary Jane's
7 leadership in carrying out the reauthorization of the Clean
8 Water Act.

9 In the early years of her career, as Mary Jane has
10 said, she was a school teacher who pilot tested Operation Head
11 Start in Los Angeles, and was hired by the Municipal Water
12 District of Orange County. She instituted a massive and
13 successful school program which we use today, some 20 years
14 later, for over one million school children. She also served as
15 consultant to the Metropolitan Water District of Southern
16 California and to the state's Department of Water Resources on
17 educational matters.

18 Before coming here to Sacramento, she was the
19 governmental affairs coordinator for the Municipal Water
20 District of Orange County. She was our eyes and ears in
21 Washington and Sacramento.

22 I want you all to realize the importance of Mary
23 Jane's selection as Chair of ACWA's Environmental Committee.
24 She has an innate ability to pull all factions and positions
25 together in a positive way to resolve complex, controversial
26 issues. She is considered a pro in regulatory negotiations.
27 She was a perfect choice.

28 Her leadership brought together people from the

1 California-Oregon border, to the deserts of Blythe, to work
2 together to provide better quality water to the people of this
3 area.

4 Mary Jane left a highly successful career in the
5 water industry to do public service and put her talents to work
6 here in the State of California. She is probably the most
7 knowledgeable water resource public member the state has ever
8 had in the position. And believe me, at this time more than
9 ever, we must have an experienced person to lead us in resolving
10 our difficult water issues in this great state.

11 Thank you very much.

12 CHAIRMAN LOCKYER: Thank you.

13 Next, please.

14 MS. GREBBIEN: Mr. Chairman, Members of the
15 Committee, it's an honor to be here today to testify in support
16 of Ms. Forster's nomination to the State Water Resources Control
17 Board.

18 My name's Virginia Grebbien, and I'm the Assistant
19 General Manager at the West Basin Municipal Water District and
20 the Central Basin Municipal Water District. These two water
21 districts are located in Los Angeles County and are member
22 agencies of the Metropolitan Water District of Southern
23 California.

24 We have currently under design and construction the
25 largest water recycling program in the United States. These
26 projects, combined with our water conservation, groundwater
27 management, and desalination project, will reduce our need for
28 imported water by over 100,000 acre feet annually.

1 These projects have multiple benefits to Southern
2 California. They provide drought-proofing. They provide lower
3 cost of water to industry, providing them an incentive to stay.
4 There's environmental protection; we're reducing discharges to
5 the Santa Monica Bay. It creates new jobs, both temporary
6 construction jobs and permanent jobs, and it assists in the
7 statewide water solution by reducing the use of imported water
8 and significantly helping in protecting the fish and wildlife
9 resources in Northern California.

10 The Districts' water recycling programs are
11 ambitious, and required committed individuals and agencies to
12 bring them to fruition, people such as Mary Jane.

13 I can't claim two decades of knowledge of Mary Jane.
14 I first met her back in 1988, when she was a member of the San
15 Diego Regional Water Quality Control Board. I had just started
16 working for the Metropolitan Water District and needed to
17 educate myself about water recycling and conservation. Several
18 people indicated I should speak with Mary Jane. I met her and
19 was literally bombarded with information.

20 Most importantly, however, I walked away from that
21 meeting with the knowledge that here was an individual who
22 believed in conservation and reclamation and was committed to a
23 process to increase resource management activities, not only in
24 her region, but throughout the state.

25 In my position with Metropolitan, I was responsible
26 for facilitating the development of recycled water in Southern
27 California. A good portion of my efforts concentrated on
28 assisting local agencies with regulatory and institutional

1 issues impeding our water recycling project. Numerous times,
2 Mary Jane worked directly with me to provide agencies a solution
3 to the regulatory and institutional issues. Her assistance
4 caused recycled water projects to be developed.

5 Similarly, Mary Jane has been an invaluable resource
6 to me at the West Basin Municipal Water District to our water
7 recycling project. She has assisted our District with
8 navigating the state law interest loan process, our successful
9 efforts to secure federal grant funding, with the environmental
10 community to generate support for our water recycling projects,
11 and with our NPDES and other permit requirements, and most
12 importantly, our recycled water marketing activities with the
13 local business community.

14 The West Basin water recycling project will be
15 delivering recycled water for irrigation and industrial purposes
16 in December of this year, and Mary Jane is a part of the team
17 which has made this project a success.

18 I believe Mary Jane will be an outstanding member of
19 the State Water Resources Control Board. She has a broad
20 understanding of federal, state, and local water issues, and has
21 demonstrated a long-term commitment to water resource management
22 activities.

23 Thank you.

24 CHAIRMAN LOCKYER: Thank you very much.

25 Senator Petris.

26 SENATOR PETRIS: I have a question.

27 So far, the witnesses in support -- and I didn't get
28 here in the beginning -- seem to be very impressive, but your

1 testimony doesn't square with parts of the record. I thought
2 I'd ask you about it.

3 MS. GREBBIEN: Sure.

4 SENATOR PETRIS: First of all, she is described as
5 not only a member of this Board, but a leading member who takes
6 the lead, such as in recycling. I know that up north, she's had
7 some good commendations from the local water district where I
8 live.

9 And yet, we have in the record a lack of enforcement
10 of the statutes by that Board that was so bad that we rejected
11 the last nominee who served on the Board during the time of
12 this default in enforcement of the law.

13 The Auditor General of the state last year -- no, a
14 few years back, during that period in question also said they
15 just aren't enforcing the law and severely reprehended them.
16 The FBI withdrew them from a list of hazardous enforcement
17 bodies because they weren't doing any enforcing.

18 And now, everybody says it's a great Board, and she's
19 the star of the Board. It doesn't add up.

20 I know there's opponents here who probably will
21 enlighten us with a little more detail, but I wondered if the
22 proponents were aware of this contradiction in the record? Are
23 you?

24 MS. GREBBIEN: I'm aware of the apparent
25 contradiction.

26 All I can say is that when I worked with Mary Jane in
27 my former capacity at the Metropolitan Water District, when she
28 was a member of the San Diego Regional Board, there was several

1 instances where recycled water projects were stuck, for lack of
2 a better word, because there was a regulatory issue, or because
3 two people needed to talk to each other and they weren't
4 talking, or because there was a perception that an up and coming
5 regulation would prevent a project.

6 And in each time, I was able, with Mary Jane's
7 assistance, to sit down with those people and facilitate a
8 solution.

9 Also, there were a couple of times where, you know,
10 in the Section 13551 of the Water Code that says water recycling
11 shall be used if it can be deemed it's a reasonable place to use
12 potable water for special purposes, and that law was adequately
13 explained.

14 So, I can only speak from my own experience.

15 SENATOR PETRIS: So, you're just talking about the
16 recycling aspect of it.

17 MS. GREBBIEN: I'm talking about water resource
18 management activities and a dedication to that.

19 SENATOR PETRIS: Are you familiar with the report of
20 the Auditor General of the state?

21 MS. GREBBIEN: No, I am not.

22 SENATOR PETRIS: Well, they say they just have not
23 been enforcing the law. Not you, the Board, which included this
24 nominee. That's pretty heavy coming from that level. They do a
25 very thorough study. They checked the record; they talked to
26 people.

27 And then you have the FBI, which kind of shocked me,
28 because I didn't know they had any role in this, but I guess

1 their role is to help enforce the federal part of these statutes
2 relating to hazardous problems, and they took the whole Board,
3 whole agency, off the list. They said, "Hey, you're not even
4 enforcing the law, so we're not going to include you in this
5 official category." That's another shocker.

6 Now, you can't have it both ways. They've either
7 been a splendid Board, and she's been one of the stars, or the
8 reporting agencies are correct. I don't see how we come out
9 anywhere in between.

10 But since your experience is limited to recycling,
11 which apparently gives her a big plus, I guess I shouldn't be
12 going into this any further. Perhaps other persons coming
13 forward in her support can elaborate on that for me.

14 CHAIRMAN LOCKYER: Thank you.

15 MS. GREBBIEN: Thank you.

16 MR. GASTON: Chairman Lockyer, Members of the
17 Committee, my name is John Gaston. I'm a consulting engineer
18 from Oakland, California.

19 I've prepared some remarks here which I'll leave with
20 you, but in the interests of time, let me just cut to the
21 experience that I've had with Mary Jane.

22 I've dealt with Mary Jane for probably almost as long
23 as Gordon has, primarily in her capacity as a member of the
24 National Drinking Water Advisory Council, of which I am still
25 the Chairman. In that, she has shown a great energy, and very
26 good leadership as it results in developing drinking water
27 quality standards in the protection of the public health.

28 She's also worked with the other association that I'm

1 associated with, the American Waterworks Association, in
2 developing an annual report for all water utilities, and I've
3 appended a copy of the annual report for the East Bay Municipal
4 Utility District, which is my home water utility. The format
5 and the content of this comes directly as a result of work that
6 Mary Jane did when she was with the Municipal Water District in
7 Orange County.

8 I won't belabor the additional work. I have not had
9 much to do with her association with the Regional Water Quality
10 Control Board, other than to seek her support for Bay/Delta
11 drinking water quality standards. I have had a considerable
12 amount of experience with her background in dealing with the EPA
13 and in dealing with the Congressional Members on both
14 legislation and on drinking water quality regulations.

15 In my 30-plus years -- and Senator Ayala, I started
16 off as a surveyor on the California Aqueduct, and I'd be happy
17 to answer those questions you had -- I have met very few people
18 that are as qualified as Mary Jane, and bringing as much energy
19 and enthusiasm to the process.

20 I strongly urge that you support her nomination, not
21 only here, but also on the Floor of the Senate.

22 Thank you.

23 CHAIRMAN LOCKYER: The rule controlling disinfection
24 by-products sounds like something that at least three of us
25 understand as the rule against perpetuities.

26 [Laughter.]

27 CHAIRMAN LOCKYER: I won't ask you to explain it.

28 MR. GASTON: Oh, I could go on for hours.

1 CHAIRMAN LOCKYER: Thank you.

2 Next.

3 MS. TRAGER: Thank you, Mr. chairman, Members of the
4 Committee.

5 My name is Susan Trager. I'm a lawyer from Orange
6 County in Irvine. I'm here to speak in support of Ms. Forster.

7 I'd like to say that I have had occasion to represent
8 some of the people who have been regulated by Mary Jane Forster
9 and her Board in San Diego. And they are dairymen on the San
10 Luis Rey River. They think she is very tough. They respect her
11 for what she did. One of them is actually closing his
12 operations on the San Luis Rey River and moving to the Central
13 Valley because the regulatory climate in San Diego for dairies
14 is very hard right now, and, I would think, probably in part
15 because of the Regional Board's activities.

16 There was an earlier speaker, Ms. Johnson, who said
17 that she would bring to the State Board a different palette of
18 skills. And I would say that the skill that I'm most familiar
19 with for Mary Jane Forster is that she's able to elicit from
20 people who are warring parties that wonderful thing of getting
21 them to talk about what they're really there for: the
22 unspeakable, the unsayable.

23 And that's exactly what the State Board needs right
24 now. It needs somebody to bring this stuff out so that there
25 can be consensus reached, and a discussion on the real issues to
26 come to an honorable solution.

27 I would recommend highly this woman for that
28 position, and I appreciate your time.

1 CHAIRMAN LOCKYER: Thank you.

2 Have we concluded hearing from anyone who wishes to
3 comment in support?

4 Such being the case, we'll start with opposition, and
5 Senator Hayden, did you wish to speak?

6 SENATOR HAYDEN: Thank you, Mr. Chairman, Members.

7 There are others more expert or detailed than I who
8 will testify, and you have my letter.

9 My particular concern, if I can state it at the
10 outset and then go into a few of the details, is that regardless
11 of other qualifications of the nominee in question, the issue is
12 whether she should be the public member of this agency.

13 This is an agency that historically served the
14 function of developing the plumbing for the State of California
15 50 years ago, and really needs a modern look in terms of what we
16 now know about the decline of fisheries, the poisoning of
17 groundwater, the pollution of the oceans, and so on.

18 And as you know, I've tried to carry legislation to
19 amend the nature of the Board, but one of the few opportunities
20 to bring a modern, environmental perspective to this agency is
21 the slot reserved for the public seat, for the public member.
22 And that, I think, should be kept in mind when we consider this
23 appointment.

24 We have a record here on the State Board and on the
25 San Diego Regional Water Quality Control Board, and you have the
26 back and forth between some of the people in San Diego and
27 Ms. Forster's response. Let me go through two or three of the
28 items to raise certain questions that I hope get answered here.

1 In 1987, 1991, 1992, and in 1993, there were four
2 episodes that I think are of some importance. In the first one
3 in 1987, there was a request for a dairy expansion, a very
4 interesting case in which the dairy in question was out of
5 compliance with current waste discharge requirements and was
6 thought to be polluting the water. And in a statement that
7 sparked some controversy, Ms. Forster responded, quote, "In
8 agricultural areas, people should give their children bottled
9 water," close quote.

10 That sparked my interest in looking at her
11 explanation of the statement, because we all know that
12 statements are important to place in context. And so, I looked
13 at her letter to you in which she says that it's a
14 "misunderstood statement taken out of context by the media."
15 And then she states that in fact, the dairy in question did not
16 expand, and so on, and because of that experience, she learned a
17 lot.

18 What she doesn't point out, and I think this is an
19 issue of credibility of extremely important nature for a public
20 member, is that while it is true the dairy in question did not
21 expand, she voted for the expansion and it was reversed on
22 appeal. That's not mentioned in her account of the affair.

23 Number two, the 1991 review by the Environmental
24 Health Coalition, and these folk will testify, I think, in a few
25 moments, according to their argument, and I haven't checked
26 their numbers as carefully as I would wish, but you might want
27 to ask them, they say that there were 222 known violations by
28 dischargers around San Diego Bay in which the Regional Board

1 imposed only two fines.

2 If you look at Ms. Forster's response to this, it's
3 simply not clear. Again, there's a credibility issue. She
4 simply says, "The Regional Board cannot verify ... the count of
5 221 violations," and goes on to make some detailed references,
6 none of which speak directly to the issue of whether or not the
7 agency, with her participation, was negligent or lenient in
8 terms of its philosophy of imposing penalties.

9 The third case, which Senator Petris has raised, is
10 about the FBI matter in 1992. The FBI letter -- well, I should
11 point out, if I might just go back, you might also look. Ms.
12 Forster has indicated that she supported a lot of penalties, and
13 there is an Attachment One in her record that you might look at.

14 Going through this list of 37 penalties, one of them
15 I notice is in the City of San Diego, a penalty of \$830,000.
16 I'm not sure if her testimony today is that she voted for that
17 or was present on the Board. I would like to see that in the
18 record.

19 There are several others, and I would indicate items
20 5, 6, 7, 10, and 19, which are listed as examples of the Board
21 imposing penalties, where I think the penalties were either
22 suspended or substantially reduced to token levels.

23 Now, if I might go back to the FBI issue, the FBI
24 letter, which you have somewhere, and I've read several times
25 but can't seem to find it now, starts out -- it's just a
26 paragraph long -- it starts out: "Pursuant to our previous
27 conversation." I'm sorry, "Pursuant to our previous
28 discussion," and it's addressed to the Executive Director of the

1 board.

2 So, it implies that there has been ongoing
3 communication between the FBI and the responsible parties at the
4 Board over the fact that the Board doesn't seem to want to
5 participate in this strike force on hazardous waste, because the
6 letter then goes on to say you're off the board because you
7 don't want to make a positive contribution.

8 The response to this, again, suggests to me that
9 there is a credibility problem here. If I might, Ms. Forster's
10 response is that, quote:

11 "Problems with staff participation in the
12 strike force were never made known to the
13 Board."

14 I hope that you will ask her on the record if that is
15 so, and that Board records be made known to us to see if, in
16 fact, the staff of this agency never mentioned to the Board that
17 they were in discussion with the FBI, and that the FBI had, in
18 effect, dis-invited them from this strike force. That would be
19 surprising to me, but it may be in the nature of bureaucracy
20 that staff are removed from task forces by the FBI without their
21 boards ever knowing that any such thing has occurred. In any
22 event, I think now is the time to clarify that record.

23 And finally, in July of last year, in a matter that's
24 already been mentioned, the State Board, while she served on it,
25 decided not to enforce water quality standards in the Delta.
26 This had the effect of letting the California Department of
27 Water Resources off the hook for some 200-300 separate
28 violations of current Bay/Delta standards.

1 Her response there is that she came to the
2 conclusion, after extensive research on fishery decline, that no
3 net loss, quote/unquote, "'no net loss' is not the proper term"
4 for resolution of these issues. It's unclear whether that means
5 she opposes as a policy no net loss, but the statement is, "'no
6 net loss' is not the proper term." And therefore, that
7 justifies the position with regard to enforcement of the Delta
8 standards.

9 However, if you look at the record, and perhaps this
10 quote is again out of context, I simply don't know, but if you
11 look at the record, her actual statement at the hearing is a
12 very, very strong statement, emotional statement, vociferous
13 statement against moving in the direction of no net loss of
14 striped bass. That appears -- forgive me. I know I'm taking
15 everybody's time, but I want to get the quote correct -- this is
16 from August 18th, 1991, and this is not the mild statement you
17 have in the record that she thinks no net loss is a bad term.

18 She says, quote:

19 "It'll be worse than in '86, when everyone
20 went nuts over conservation. If you do
21 fish, the scales are already in balance.
22 You don't use as a goal one that would
23 provide striped bass protection that would
24 result in no further decline of that
25 fishery. You can't say that. They
26 shouldn't go back. Who knows why the fish
27 died back then? I'm afraid the way it is
28 going, this goal isn't good; no net loss

1 isn't good."

2 So here, she's not referring to no net loss as a
3 term, but as a policy:

4 "... the goal isn't good; no net loss
5 isn't good. They've got to keep focusing
6 on balance, that no decline of striped
7 bass goal puts it all back into the Delta
8 and we're trapped."

9 On credibility grounds alone, I would ask you to
10 examine closely the discrepancies between what was actually said
11 at the time, the votes that were actually made at the time, the
12 charges of the environmentalists, the response of Ms. Forster,
13 and I think that you would agree that there is a credibility
14 problem and an environmental problem that should not be there
15 when we have the opportunity to appoint a member who truly
16 represents the public.

17 Thank you very much.

18 CHAIRMAN LOCKYER: Senator, you're welcome to stay
19 while we ask for comment, if you wish.

20 SENATOR HAYDEN: I'd be happy to. I'm in Toxics
21 Committee where the pesticide bill is being debated.

22 CHAIRMAN LOCKYER: Go ahead, and I'll make sure we
23 follow up on that.

24 SENATOR HAYDEN: All right, thank you.

25 CHAIRMAN LOCKYER: It may be appropriate time,
26 Ms. Forster, if you wouldn't mind, to --

27 MS. FORSTER: No.

28 CHAIRMAN LOCKYER: -- go through those five areas of

1 discussion.

2 I know you took notes.

3 MS. FORSTER: I took notes.

4 The Van Tol Dairy. The Van Tol Dairy is in the
5 Ramona area. When that came before the Regional Board, it was
6 also -- it was a father and a son operation. There was also a
7 housing tract planned, and a lot of the locals wanted the dairy
8 to expand.

9 Down gradient of and around some of the areas, there
10 were a lot of nitrates in people's wells. It was the turkey
11 capital of the world. There were turkey and chicken ranches
12 there historically for many, many, many years.

13 There was one woman who came with her four children
14 named Carol, and she was so beside herself because of the
15 nitrates in her well.

16 So, the Ramona Water District manager was there, and
17 a lot of people in Ramona have imported water. So we tried to
18 discover whether Carol could get some water, a distribution
19 service to her home, and it was impossible.

20 The reason we voted for the dairy, and we put so many
21 regulations on the dairy, was, they were going to do amazing
22 work. In fact, the County of San Diego -- this is our formal
23 record from the Regional Board -- Tom Esher of the County of San
24 Diego Department of Agriculture said no dairy in the state ever
25 had to do some of the things that this Regional Board is
26 requiring the Van Tol Dairy to do. They had to do -- we're
27 going through whether they should do CEQA EIR, and the County
28 kept saying no, they don't have to do that.

1 They didn't expand because they didn't have the money
2 to expand. The Board voted for its expansion if they did all
3 the things they were supposed to do, but it didn't help Carol
4 Close, because she was -- we had engineers, we had people trying
5 to find out what to do.

6 So, in an emotional thing, she had these four little
7 children. I have four children. I said, "Carol, I called EPA."
8 I said, "What's your health advisory?" I asked the Department
9 of Health. They said, where there is no alternative water
10 supply, and if they have high nitrates, then young children --
11 they're called the sensitive population, under five -- should
12 drink bottled water. That was from me to Carol.

13 And it got picked up, and it was in the Tribune. And
14 it sounds terrible, but the verbal expression never comes out
15 good in these records.

16 And that was one of the reasons that, when I met John
17 Gaston, I said I'd like to serve on that board that does
18 drinking water standards, because I want to find out what we're
19 doing in this nation. And I did. He pointed me to the resource
20 committee that was doing the groundwater protection strategy for
21 the United States.

22 So, it was a terrible situation. I wish I hadn't
23 said it. I've learned about verbal versus written, and that's
24 my answer on that.

25 If we want to go down to the 1991 violations, I have
26 the record of all the violations here. I've gone over this so
27 many times. I've asked at the Regional Board to go over it with
28 me.

1 CHAIRMAN LOCKYER: I guess, just before you move on
2 to the next point, just to keep the timetable straight, the
3 dairy expansion was a matter that came up in '87?

4 MS. FORSTER: I think yes.

5 CHAIRMAN LOCKYER: It's been suggested that the U.S.
6 EPA Advisory Council on Drinking Water drafted 86 amendments.

7 MS. FORSTER: No, I'll explain that, Senator, and I
8 can understand the confusion.

9 When you talk about federal laws, you use the year,
10 because when you're working on regulations, you have to identify
11 the year of the regulations you're working on. So, the Safe
12 Drinking Water Act was called the Safe Drinking Water Act of
13 1986.

14 Now, I started to seek appointment to that in the
15 late '80s. So now we have the new -- the Senate has the Safe
16 Drinking Water Act of 1994. So, it wasn't that the issue that I
17 was talking about something that I didn't do any -- it's the
18 title.

19 CHAIRMAN LOCKYER: These were regs?

20 MS. FORSTER: The regs and the title, and that's
21 understandably confusing.

22 CHAIRMAN LOCKYER: And then you were about to go on
23 to the '91 --

24 MS. FORSTER: On the '91, going over the violations,
25 and then I went over the most recent ones.

26 To the best of my knowledge, there were only two
27 violations brought before the State Board. The administrative
28 procedures policy gives you guidelines on how to do regulations.

1 And for these, you have the A, B, C, D, level. The staff does
2 most of the levels administratively, and they only get to the
3 Regional Board when there's somebody who's so recalcitrant and
4 doing a discharge that is so noxious that they have to bring it
5 before the Board for a hearing.

6 Now, I'm not wiping clean the slate that there's not
7 a flood of problems in San Diego Bay. I've been working real
8 hard on trying to figure out the actions that need to be done to
9 clean up San Diego Bay.

10 But for the record for this issue, there was only two
11 brought before the Board. Many of them were for -- were number
12 A, failure to submit a monitoring report, so they get a
13 letter, they get a phone call. Staff takes care of a lot of
14 these issues without engaging the Board.

15 The -- one of them, and this is from our staff and
16 from me going through, was a Navy graving dock, where the 108 --
17 this is my count. See, they go into the record. This wasn't in
18 our Board agenda. You have to go through all the records and
19 count violations.

20 One hundred and eight were a gravy -- when they take
21 a big ship out to fix it, the water falls off. They put it in
22 the graving dock, and the water pours down. That water was
23 supposed to be better than the Bay water, which would be
24 impossible because it's the Bay, you know. Pull it up, it's the
25 same water going down. So, staff is trying to look at that
26 issue and revisit that permit.

27 I put together a little blue packet I didn't hand you
28 out. One, to highlight this issue, and two, to show you all of

1 the completed projects in the Bay, the ongoing actions on the
2 Bay, and the proposed actions on the Bay.

3 And I want to make one point, because I think this is
4 critically important, that Regional Board takes the Bay so
5 seriously, and have been so on the Port District, because the
6 Port Direct runs the port tenants. Their budget since we got
7 very involved in this issue has increased from \$18,000 a year to
8 \$10.4 million just for environmental compliance. They used to
9 have two environmental specialists; now they have eighteen.
10 It's full court press to try to get a clean Bay.

11 So, I have these for you if you would like them, and
12 I brought them today.

13 CHAIRMAN LOCKYER: The Sergeant there will distribute
14 them.

15 MS. FORSTER: I used to be a teacher.

16 CHAIRMAN LOCKYER: You've got yellow also?

17 MS. FORSTER: This is the spelling test; this is the
18 math test.

19 [Laughter.]

20 MS. FORSTER: Let's see, would you like to go the --
21 what's next -- the 830,000, the enforcement. I have yellow for
22 enforcement.

23 The enforcement record is a hard one for a Regional
24 Board member, because you do -- you set penalties; you get in a
25 very contentious hearing. You set penalties. And somewhere in
26 the middle '80s, this availability -- and the procedures for
27 doing administrative civil liabilities is where you could set
28 penalties -- became a policy of the state.

1 We were setting several penalties, and then the
2 public started to come in. And they would say, "You're
3 penalizing the citizens of San Diego. We're the one that's
4 going to have to pay all these penalties. We would like you to
5 use that money locally."

6 I was one of the most aggressive leaders in the state
7 to try to use money locally for environmental enhancement. On
8 my yellow handout, I couldn't -- I don't know how to go back to
9 what penalties were suspended and what stayed, because
10 sometimes, like the Whelan Dairy, the judge threw out over
11 \$100,000 of penalties. So, you do a penalty; sometimes you do
12 the penalty and you say, "We will -- we will forgive if you fast
13 track."

14 Here's the yellow.

15 CHAIRMAN LOCKYER: Sergeant, we have some more paper.

16 MS. FORSTER: So, I just, instead of going back to
17 that record because I can't talk about all of those, I will say
18 why the \$830,000 is on there. That's because that was appealed
19 to the State Board, and I voted to uphold that penalty. It
20 started in discussion when I was there, and our Board upheld
21 that penalty. So, either in one position or another, I
22 supported that.

23 CHAIRMAN LOCKYER: How about the FBI strike force?

24 MS. FORSTER: The FBI strike force. The FBI strike
25 force is from the District Attorney's Office. To tell you the
26 truth -- we're all under oath, aren't we? Well, let's pretend
27 I'm under oath.

28 To tell you the truth, staff used to tell me, we

1 can't tell you what's going on with --

2 CHAIRMAN LOCKYER: You mean nothing's been true up to
3 right now?

4 MS. FORSTER: Yes.

5 [Laughter.]

6 MS. FORSTER: But this is such a critical issue.
7 They were never allowed to tell us what they were working on in
8 the task force. And I would say -- we would every once in a --
9 so, the mode of operation was, the staff would work with the
10 task force, the strike force. They would cooperate in any way
11 they could.

12 They didn't always -- we didn't always have the
13 manpower as when you look at the problems cited by the Auditor
14 General report. This few staff can't be everywhere. So, they
15 were supposed to access the records, help them, give them leads
16 if they wanted leads, whatever they were supposed to do. So,
17 they never really told us the problems they were having.

18 But there's a very interesting differentiation
19 between due process and the way law works for Californians and
20 the task force. The task force in San Diego was focused on
21 small business, criminal -- criminal environmental violations.
22 The Regional Board does not regulate small business. The
23 Regional Board regulates waste water treatment plants who carry
24 the regulations of small business.

25 The Regional Board is a due process arena. If you
26 are violating the law, you get -- you go through the process,
27 and you come before us.

28 The strike force is more of a sting operation, and I

1 really don't know how they operate, because I was never shown
2 how they operate.

3 I do know that this raised our awareness big time.
4 It's caused a lot of heartache for the local Regional Board, and
5 we're bending over backwards to do whatever we're supposed to do
6 and work cooperatively with that hazardous waste task force.

7 Unfortunately, they're running out of money around
8 the state, and I don't know what will happen to those task
9 forces.

10 Fortunately, we do regulate and try to give
11 everybody due process, so it isn't like people who are polluting
12 are going to fall between the cracks.

13 Anything else here? Did you get the yellow sheet?

14 CHAIRMAN LOCKYER: Not yet.

15 MS. FORSTER: The yellow sheet is just the City of
16 San Diego's enforcement.

17 CHAIRMAN LOCKYER: Yes, I'm sorry, yes.

18 MS. FORSTER: And if you go through this, this is
19 interesting because you'll see different examples of how we
20 tried to work on each action. Every one is unique.

21 The first one, Pump Station 64, we had 44 separate
22 tasks. If they would hurry up and fix that, they would be able
23 to not have to pay part of their payment. All right, they did
24 have to pay \$11,391, and we made them pay that to the
25 Penasquitos Lagoon to help them.

26 Fiesta Island, we collected 11,000.

27 The big spill, Thanksgiving Day spill, we assessed
28 them a million dollars. The public came in, and the City

1 begged, you know, "We're going to fix this," so we -- through
2 some mechanism, this is a long time ago, they did give us
3 \$200,000 and another 100,000 to the Penasquitos Lagoon.

4 Then you see another one where they were fined on a
5 spill for electrical failures, and the same pump station. We
6 fined them 300,000 and gave 50,000 to the Penasquitos Lagoon.

7 And I like this one, because Laura's going to come up
8 here and say some things about me. One of the spills, we gave
9 \$25,000 to the Regional Board, which really is the state, and
10 25,000 to the Environmental Health Coalition, which I think they
11 used to make children's calendars.

12 The last one, now this is a creative one. When the
13 City and the state were -- when the state and the U.S.A. were in
14 the Consent Decree in San Diego against the City of San Diego,
15 they had to pay \$500,000 to the U.S. Treasury, but they're
16 supposed to share half of that with the state. And we're trying
17 to collect on that.

18 But we have them -- and this didn't go away. I
19 checked this today. They are spending \$500,000 per year for
20 five years on water conservation and retrofit.

21 Enforcement is one of the toughest issues. There is
22 a new guideline that San Francisco Regional Board has come out
23 with that's like a cookbook. I used to beg for a cookbook, so
24 everybody knew where they were on this.

25 But I'm going to close my comments on this yellow
26 sheet. The last page is a record from the June 9th meeting on
27 the City of San Diego, where the Regional Board was going to
28 assess the City of San Diego \$2.5 million because they didn't

1 think they really did a good enough job in some of their tasks
2 on cleanup the sludge at Fiesta Island.

3 The legal counsel for the Sierra Club begged, and it
4 says: "[I] ask you to cancel the fine against the City," I
5 underlined these:

6 "Your legal counsel will tell you that
7 substantial compliance is a well
8 recognized defense to administrative
9 complaint action. Last [year], the Sierra
10 Club was here asking for the fine,"
11 and they did, after that, send a letter to the State Board
12 asking us to look into the fine, look into what the City was
13 doing.

14 And then they go on later, they said they appealed to
15 the State Board, but then they changed their position. And if
16 you turn the page and you go to the bottom, they changed their
17 position for the same reason that most responsible people who
18 have to deal in these complex issues get a little bit of change
19 of philosophy when they're trying to work to the resolution.
20 They said:

21 "... from our perspective, if you force
22 the City to pay this fine, who will suffer
23 by it? It will be the Sierra Club's
24 members and the Metro rate payers who will
25 be paying this fine. And why?"

26 Why would these people be punished? For what reason? Because
27 a few pieces of equipment were not in place?

28 Well, that's how I'm going to end my story on

1 enforcement.

2 I love that we're moving in a new direction. I love
3 that the Sierra Club understands the complexity --

4 CHAIRMAN LOCKYER: New direction meaning watersheds?

5 MS. FORSTER: No, enforcement. This is -- yellow is
6 my enforcement.

7 CHAIRMAN LOCKYER: Got it.

8 MS. FORSTER: Enforcement has been a thorny issue.
9 It's a big issue. It has many menus.

10 This is going to make it better for the regulators to
11 be able to have something they can show to the public. This is
12 what you're going to have to deal with. And for the public to
13 know, to tell their people: hey, we missed that monitoring
14 report; it's \$250 a day every day until you get it in.

15 So, those are my answers. No, one more.

16 No net loss for striped bass.

17 CHAIRMAN LOCKYER: Before you go on, could you
18 explain what you think the new direction in enforcement is that
19 you're hopeful and satisfied with?

20 MS. FORSTER: It's going to -- this has not been
21 adopted by all the Regional Boards, but we just finished -- this
22 week we have the final reports -- we just finished an outreach
23 problem where we brought Californians in to examine the
24 performance and the programs of the State Water Board and the
25 Regional Boards. And I sat on the program review for
26 consistencies for Regional Boards, and they talked a lot about
27 enforcement.

28 And the San Francisco Regional Board has come up with

1 a document that's sort of like a framework and a road map for
2 good enforcement policy. And I think, using a model like this,
3 I'm not saying that it's the perfect model, and we'll have to
4 see what Californians think, it's going to go a long way to
5 addressing the debate on what's a fair penalty, why don't you do
6 more penalties, why did you spend, how do you do creative
7 penalties. And we've needed this for a long time.

8 I'm supportive of it, and I even think some of my
9 opposition here today is supportive of it, so it's success.

10 There are successes on all of these issues.

11 My good friend Marian Otsea, on the San Francisco
12 Board, taught me about no net loss for fish. She had to sit on
13 the Water Quality Triennial Review, or one of the processes a
14 few years ago. And she used to say to me, "The answer is not no
15 net loss, Mary Jane. It's habitat."

16 And that's why I hated -- that went away. After that
17 -- I wasn't the only one that thought that that wasn't a good
18 way to do the Delta. It's habitat. It's what's going on in
19 that Delta that's causing all of these declines.

20 And the reason that I talked about striped bass is,
21 they're the predators. They're eating all the salmon smelts.
22 So, we certainly have to look at what really happens with these
23 fish species, and what's a pragmatic, reasonable way to try to
24 get them on the heal, and to restore, and address these issues
25 with a scientific background.

26 SENATOR AYALA: Question on that point.

27 Isn't the striped bass run off native fish? The
28 striped bass are not a native fish in the Delta, is it?

1 MS. FORSTER: No.

2 SENATOR AYALA: In other words, they're getting rid
3 of the native fish.

4 MS. FORSTER: We were supposed to be protecting the
5 native fish through the Endangered Species.

6 SENATOR AYALA: That's right, and the striped bass,
7 which was imported -- actually, it's illegal immigration; isn't
8 it?

9 [Laughter.]

10 MS. FORSTER: I heard you say that before.

11 CHAIRMAN LOCKYER: No defense.

12 MS. FORSTER: I do have a pink sheet on the Auditor
13 General's report, but I don't know if you want to hear anything
14 more from me. But I'll be glad to hand it out --

15 CHAIRMAN LOCKYER: What did you say about that
16 report?

17 MS. FORSTER: I was the Chair, and so that -- this
18 was a very big issue during my Chairmanship.

19 CHAIRMAN LOCKYER: All right.

20 MS. FORSTER: So the focus -- this was --

21 CHAIRMAN LOCKYER: This is only one sheet.

22 MS. FORSTER: This is a short one.

23 CHAIRMAN LOCKYER: Must have been hard to respond to.

24 MS. FORSTER: I have the report, but I knew you were
25 going to get tired of my voice.

26 CHAIRMAN LOCKYER: No, no, you're doing fine .

27 MS. FORSTER: The calendar year was '85-86. The
28 focus was on our baseline work, self-monitoring reports, how

1 many compliance inspections we did, what our enforcement actions
2 were, whether our water discharge requirements were up to date.
3 We had a lot of backlog.

4 The irony was, they were doing everything by hand.
5 We didn't have enough resources. We were redirecting to a lot
6 of new programs, and we had vacancies.

7 So, what happened as a response to the Auditor
8 General? We had a new program on monitoring. We got new micro
9 computer capability. We started computerized tracking of our
10 monitoring reports. We had a 90 percent success over the year
11 before once we got to computer capability.

12 We started a vigorous enforcement action. A lot of
13 this can be done administratively by the staff. They got an 88
14 percent response of collecting penalties from people who were
15 late before they even had to come before the Board. And we did
16 administrative civil liabilities against 15 dischargers of
17 two million five hundred and twenty-five dollars, two hundred
18 and thirty-nine cents [sic]. That's dollars: \$2,535,239. I
19 worry about my written record.

20 The other activities that were going on this year --
21 that year, I was Chair of the 301 H waivers, where every big
22 waste water treatment plant in the South Coast area were coming
23 in, trying to get out of secondary treatment. It took 3,000
24 staff hours to work on that. And I'm very proud to say that
25 those plants stayed at secondary treatment. And I was very --
26 my body energy was very strong for that, because it's such a
27 highly used recreational coastal area there.

28 We were doing the new toxic pits programs, the

1 leaking landfills programs, the contaminated drinking wells, and
2 we were implementing Proposition 65.

3 So, I went -- the next year, I spent eight weeks of
4 my own time at the State Board, working on the budget, getting
5 the resources, getting them money for the computers, and getting
6 our vacancies filled so we'd never have to face that again.

7 That's my pink sheet.

8 CHAIRMAN LOCKYER: Got it.

9 Perhaps what would be timely would be to ask for any
10 others who wish to comment in opposition to the confirmation.

11 MS. HUNTER: Good afternoon, Senators, Mr. Chairman.
12 My name is Laura Hunter. I am from the San Diego Environmental
13 Health Coalition. On the EHC, we are a 14-year old public
14 interest, nonprofit, grassroots organization, dedicated to the
15 elimination of illness and environmental degradation caused from
16 the use of toxic chemicals in the home, the workplace, and the
17 environment.

18 Environmental Health Coalition is an active
19 participant before our local Regional Board, and we have
20 followed the actions of our Regional Board very closely for the
21 past seven years.

22 Based on an analysis of Ms. Forster's ten-year record
23 on our Board, we are strongly opposed to the promotion and
24 confirmation of Ms. Mary Jane Forster to the State Water
25 Resources Control Board.

26 I assure you, we do not do this lightly. Our
27 opposition is very difficult. Ms. Forster is a very nice
28 person, and big jerks are a lot easier to oppose. It is also

1 difficult because, as an organization that is 90 percent women
2 staff, we strongly support and we want to see women promoted to
3 positions of power within the government. So, we are not doing
4 this in any kind of off-hand fashion. It is a very serious
5 issue with us.

6 There is too much at stake here to bow to what is
7 comfortable and to what is easy, and it is Ms. Forster's
8 ten-year record on our local Regional Board, and her actions as
9 a regulator, that are at issue here.

10 This appointment is critically important. In the
11 balance of your decision here today hangs the water quality of
12 the entire state. If you confirm Ms. Forster to the State Water
13 Board, that action will send a strong and very troubling message
14 to the citizens of California that water quality is not a
15 priority of this Senate.

16 Although State Board members are appointed by the
17 Governor, they work for you and are charged with enforcing the
18 laws that you pass. Ms. Forster has not adequately enforced the
19 law that she was charged with enforcing, and she has not acted
20 to protect the resource that we trusted her to protect.

21 You should be very concerned about her record.
22 Although in our recent meeting, Ms. Forster asked that the past
23 not be part of our assessment of her candidacy, we have no
24 choice. Past performance is the best indicator we have of what
25 future performance is going to be. We felt that it was very
26 important that you knew her record as well as do so that you
27 have full information to determine if this is the kind of
28 decision and policy maker that you want to see on the State

1 Board, controlling water quality in your district.

2 You will find that during the time Ms. Forster has
3 been on the Regional Board, the decisions they have made are
4 nonprotective and inappropriate. Enforcement has been too often
5 nonexistent. You don't even have to take our word for it. As
6 was mentioned before, the 1987 Auditor General's report,
7 everybody agreed. The Executive Officer of the Regional Board,
8 the Secretary of the Environmental Affairs -- I'm sorry, I had
9 these to hand out. This is the summary of the findings. I
10 believe you have it already.

11 CHAIRMAN LOCKYER: Yes, we do.

12 MS. HUNTER: The Secretary of Environmental Affairs,
13 the Chairman of the State Board, all agreed that the Regional
14 Board's cooperative approach to compliance is not working, and
15 the Regional Board was told to increase enforcement actions.

16 Unfortunately, very little has changed, and I don't
17 -- I mean, this is a long time ago. It was 1987, but here
18 you've got, you know, the articles from 1987, "State Gives
19 Regional Board Low Grade," you know, blah, blah, blah, "Water
20 Board Faulted." And then 1992, it's the same story. They're
21 thrown off the FBI task force.

22 One thing that's very concerned of us, and I was here
23 a year ago -- I don't know if you remember --

24 SENATOR CRAVEN: I remember.

25 SENATOR PETRIS: I remember.

26 MS. HUNTER: Okay. Well, Mr. Lockyer, you won't
27 remember because you were not here.

28 But at that time, Senator Petris, you asked me how

1 are things going since this Auditor General's report, so I
2 followed up on that. And many of the criticisms of the Board at
3 that time have still not been rectified.

4 When Ms. Forster left the Board in July, '93, to go
5 to the state, by staff estimate, 70-80 percent of permits had
6 not yet been renewed that needed renewing. This is a problem
7 that is not yet fixed.

8 The FBI similarly recognized their lack of commitment
9 to enforcement and, as was discussed before, removed them from
10 that board.

11 Our own review of self-monitoring and compliance
12 records revealed a significant lack of enforcement. Now, I want
13 to clarify one thing, and I went over those -- we had
14 double-checked our records three times. We only counted 37 of
15 those Navy graving violations, not a hundred, so they were not
16 the bulk of the violations that we found.

17 Two fines were imposed. One percent enforcement is
18 not adequate, and it sends a message to dischargers that
19 pollution pays and the risk of getting caught is very, very low.

20 I had another thing I wanted to say, and I'll think
21 of it in a minute. I can't remember.

22 Here are some more of the more troubling actions of
23 Ms. Forster during her ten years on the Regional Board. She
24 voted to leave DCE in drinking water groundwater basin 80 times
25 higher than the Title 22 standards, even though both the
26 consultants for the discharger and her own staff stated that
27 more clean-up was indeed possible. Ignoring the advice of her
28 own attorney, Ms. Forster's vote showed that she has a greater

1 sensitivity to polluter's needs, the polluter's needs to borrow
2 money and sell contaminated land, than those of the general
3 public that may rely on that drinking water in the future.

4 It is also interesting to note that when we appealed
5 this decision, no sitting Regional Board member felt strongly
6 enough to come to Sacramento and defend that decision which
7 Ms. Forster had been so active in.

8 She also voted to issue proper permits that did not
9 EPA requirement -- meet EPA requirements for chronic toxicity
10 standards. And the discussion about the reclaiming of recycled
11 water was interesting. I think we all want reclaimed water, but
12 not at any cost. And we have to be very careful about how far
13 we degrade the water quality standards to allow for this water
14 reclamation to happen.

15 For those of you that aren't used to this lingo,
16 chronic toxicity measurements, it's the measure of how much a
17 discharge kills living things in the water. And what was a big
18 concern regarding the Eastern Municipal Water District permit
19 was that they were not going to require chronic toxicity, even
20 though Eastern testified they probably could make the standard.
21 So, I'm not even sure why they weren't asking for it. But this
22 was supposed to be a live stream discharge, so it didn't make
23 any sense at all.

24 Her insistence on violating EPA rules wasted a
25 thousand staff hours in pursuing this. Eventually, in an
26 unprecedented move, EPA had to come in, take over the permit
27 until they finally passed a legal permit and it wasted months
28 and months of our time.

1 She voted to expand the Van Tol Dairy, and you're
2 going to hear more about that in a minute.

3 She voted to let the San Onofre Power Plant off the
4 hook for massive damage to the marine environment. This vote
5 was against staff recommendation, and it was also against
6 conclusions by a very exhaustive, 15-year, \$48 million study
7 that the Marine Review Committee, convened by the Coastal
8 Commission, did. This case was settled by a lawsuit, resulting
9 in Southern California Ed. paying over \$30 million to mitigate
10 impacts which the Regional Board wouldn't even admit. These
11 impacts included: 21-57 tons of fish destroyed by the intake,
12 and 4 billion eggs and larvae, and nearly 20 percent of water
13 quality -- clarity being reduced.

14 She voted against making the City of San Diego do an
15 independent assessment on what caused the break in the Point
16 Loma outfall which closed their beaches for four months. She
17 also made a motion to assess no fines. You remember the famous
18 sound bite for San Diego at the time: Where the affluent meet
19 the effluent. It was not a high point in our City's economic
20 and tourist history.

21 Both actions were against staff recommendation. In
22 this case, she followed the advice of the City's attorney, and
23 that's even in her response to the fact sheet, she says: well,
24 the City's attorney said we didn't have jurisdiction.

25 What she left out of the response is, her own
26 attorney said she absolutely, in no uncertain terms, did have
27 jurisdiction to require that report.

28 It took then-Assemblyman Peace to write legislation

1 to undo that decision. That is a waste of our time and our
2 money. That is the job the Regional Board is supposed to do for
3 you. You should not have to come back in and write more laws to
4 undo decisions that your own Regional Board is making.

5 This entire record cannot be ignored. Her many
6 friends that have spoken today are indeed impressive, but
7 there's one thing missing. They have not been living with the
8 results of her decisions the way that we have. If you look at
9 our list of supporters, it is admittedly shorter, but there's a
10 lot more groups that have members in the region where
11 Ms. Forster has been directing water quality for ten years.

12 The grassroots San Diego groups alone include over
13 24,000 residents of San Diego County that protest her
14 appointment, and we're the ones -- we are the ones, not the
15 water districts in Northern California; it's we in San Diego --
16 that have had a direct exposure to the results of her decisions.
17 The results are that our water quality is deteriorating.

18 What has been the cost of these nonprotective
19 decisions? San Diego is a dry, arid area with a very fragile
20 aqua system and only a few groundwater drinking basins which we
21 must guard zealously. I included facts about number of beach
22 closures.

23 There's only one clarification I want to be sure that
24 you -- that we make, is that we had in 1991, we had almost half
25 of all of the beach closures in the entire state. And before
26 you start down this track, they were not the majority related to
27 the Tijuana sewage problem.

28 The case of the City of San Diego, I think it's

1 interesting there's a fact sheet on that, and I will forward to
2 reading that. But the Regional Board's lack of action relative
3 to the City is legendary. To call the sewer system in San Diego
4 a disaster is an understatement: 3,700 reported spills in 7
5 years, from June, '83 to June, '90 resulted in 86 million
6 gallons which went into our surface waters. In the last six
7 months Ms. Forster sat on our Regional Board, there were 197
8 reported sewage spills from the San Diego sewer system.

9 I think what we know from this is, even though there
10 were some fines that looked big, and then were reduced by
11 millions of dollars, that the City was not hearing them. They
12 were not paying attention, and they continued to violate their
13 permit.

14 I want to bring out some of the highlights of the
15 Regional Board's inaction, and I also want to say that none of
16 these are related to the whole secondary sewage issue, which, as
17 Ms. Forster said, is under court order at this point.

18 The outfall break, which caused those beaches to be
19 closed, I talked about before. What is also interesting to us
20 about this is that the EPA Inspector General report found that
21 the City misused the funds for fixing the outfall pipe, and that
22 the City did not maintain the sewer system. No surprise to us,
23 who have been swimming in that sewage for as long as we have.

24 They also found that the City had avoided hundreds of
25 millions of dollars letting the sewer system fall into gross
26 disrepair. And I would -- that is part of my packet, and I hope
27 you have a chance to look at the Auditor General's report.

28 The City violated their permit 28 out of 60 months,

1 and they illegally discharged over 40,000 dry weight tons of
2 sewage sludge into our ocean. The City avoided \$18 million of
3 costs by estimate of a State Board staff --- that's not my
4 number that I made up -- by using our dump -- using our ocean as
5 an illegal sludge dump. The Regional Board knew of this for
6 over a year before it acted.

7 The EPA also issued a notice of violation against the
8 industrial waste pretreatment program, which has fallen into a
9 big disaster.

10 I am trying to hurry up.

11 Where was the Regional Board in all of this? This
12 record is appalling, and Ms. Forster, unfortunately, should get
13 much of the credit for it.

14 We have worked with the Board for seven years, as I
15 said. For the past four years, we have attended virtually every
16 meeting or listened to the tape.

17 The philosophy that she has articulated in these
18 meetings should trouble you. Her philosophy is that Regional
19 Boards should not fine public agencies, and that swimming and
20 diving in the ocean may be negotiated away.

21 I must believe that you do not share this view. She
22 told divers in a November, '91 hearing that government
23 regulators could not protect swimming in some ocean areas. And
24 she said, if you want to do diving in some areas, the divers
25 need to get the citizens together and decide that that's a good
26 use for the ocean.

27 Well, I'm very sorry; we did that. We got all the
28 citizens together; it's called the Clean Water Act. And that is

1 exactly where she gets her authority.

2 Ms. Forster does not clearly understand the
3 requirements of the Clean Water Act, nor does she view it as the
4 will of the people.

5 These philosophies are carried out in a very
6 troubling manner: lack of an action by the very agency charged
7 with enforcing the law. In fact, the Regional Board's staff --
8 and this is a very critical point -- has been chastised for
9 trying to bring impending violations to the Board's attention.
10 Staff inspectors that found violations have been demoted. At a
11 March 15th, '93 hearing, she implied staff was suspicious and
12 paranoid, and seemed to query their motives about regarding
13 their actions, when staff was responsibly raising issues
14 regarding adequacy of repairs of yet a different broken outfall
15 in San Diego County and seeking direction.

16 So, I have been sitting in those meetings for four
17 years. There was a very clear message at that time from the
18 Board to the staff: we are not interested in enforcement.

19 I'm almost done, I'm sorry.

20 On record are over 70 water specialists, sanitary
21 districts have supported her confirmation. This begs the
22 question: who will she represent on the State Board, the public
23 member or the water districts? If she is appointed to the
24 general public seat, the whole Board is thrown out of balance
25 and will not function as it is supposed to.

26 Her fact sheet is misleading, and I've pointed out
27 some of the things earlier. We are very disturbed by many of
28 the misrepresentations in this document.

1 She took credit for a fine. My understanding of how
2 the City's appeal of that last fine for \$830,000 is very
3 different from what Ms. Forster says. I saw the letter that
4 said the staff had dismissed and not chosen to hear that appeal
5 because they failed to raise substantive issues. So, I guess we
6 haven't -- we don't know exactly what happened there.

7 She claimed to her credit, and it says in the
8 response, that she resolved the Tijuana sewage problem. That
9 problem is in full pitched battle today as we speak. She claims
10 to have cleaned up all major hazardous waste sites. None of
11 that is true.

12 No member -- it also says, or she makes the comment
13 that no member of the regulated community -- no member of the
14 regulated community would testify that the Board's actions were
15 nonprotective.

16 Well, I'm sure they weren't, because they got away
17 with a whole lot, and that's the problem.

18 EHC is joined by many groups in opposing
19 Ms. Forster's opinion [sic]. You have a list before you. I
20 guess I won't go into that.

21 In conclusion, I'd just like to say, as we have
22 stated, we have no quarrel with the person of Ms. Forster. It
23 is her record that matters, and it is her record that is
24 untenable. She is too biased to served equitably on the Board.

25 I pose the same question to you that I posed to
26 Governor Wilson in our June 20th letter: why would you choose
27 to promote to the powerful State Water Board a member of a
28 Regional Board that has failed so significantly to protect its

1 own water quality?

2 We implore you, Senators, to utilize your authority
3 and your considerable influence to reject this appointment.

4 I was also given today a statement from Citizens for
5 a Better Environment, to ask that it be submitted into the
6 record.

7 CHAIRMAN LOCKYER: Certainly.

8 MS. HUNTER: If I could just rebut on a couple of
9 points. I don't know if you want me to do that later. I just
10 had a couple clarifications on what I heard.

11 CHAIRMAN LOCKYER: I guess now is the appropriate
12 time.

13 MS. HUNTER: Okay.

14 One issue about the Port District, the additional
15 point about that, that their budget for water quality and
16 clean-up issues has gone from whatever to \$10 million.

17 We're also going to take a whole bunch of credit for
18 that, because we -- and Ms. Forster was not present the day that
19 this was voted on, but one of our appeals that we had appealed
20 to the State board that we won, unanimously, in fact, was that
21 the Port District had to clean up. So, \$6 million of that is
22 directly attributable to the appeal of the Environmental Health
23 Coalition to have to clean up that site, because the Pecos
24 Terminal clean-up -- I talked to the environmental manager and
25 he said it was around \$6 million. So, we have all been very
26 involved in that.

27 The Van Tol Dairy, there was also testimony that cow
28 dung was flowing down the river into a drinking water reservoir,

1 and it's very troubling that the vote was to expand that dairy,
2 and they were already far out of compliance. They had too many
3 cows; they had stuff going into the river. And yet, they were
4 even discussing the fact that they should allowed to expand.

5 SENATOR CRAVEN: Where was that?

6 MS. HUNTER: That was in Ramona.

7 SENATOR CRAVEN: Is Ramona part of the City of San
8 Diego?

9 MS. HUNTER: It's in the County.

10 SENATOR CRAVEN: Who do you think should have
11 responsibility for something like that?

12 MS. HUNTER: Well, if it's a water quality issue, the
13 Regional Water Quality Control Board should do that.

14 SENATOR CRAVEN: It is also an issue before a local
15 government before it gets to water quality.

16 MS. HUNTER: Well, the surface waters are the
17 jurisdiction of the Regional Water Quality Control Board, and
18 they had the permit that was being violated.

19 SENATOR CRAVEN: How recently was that?

20 MS. HUNTER: That was in 1987 and 1988. It was a
21 hearing.

22 SENATOR CRAVEN: Thank you.

23 MS. HUNTER: The last point I'd like to make is that
24 a cookbook for enforcement exists; it's the Porter-Cologne Act.
25 And it tells you what enforcement is available, and what should
26 be done. The State Auditor General's report, and I was there
27 personally for the last four years, begging that enforcement be
28 taken.

1 Thank you.

2 CHAIRMAN LOCKYER: Ms. Forster, did you want to
3 respond to any?

4 Let me start. There was the thought that your
5 philosophy indicates opposition to fining public agencies.

6 Do you regard that as a correct statement?

7 MS. FORSTER: No.

8 CHAIRMAN LOCKYER: I guess your vote on the statewide
9 Board with respect to the San Diego matter that we discussed
10 earlier would be indicative of a willingness to fine them.

11 MS. FORSTER: Yeah.

12 I'm going to make a statement, Senator Lockyer. I
13 never debate Laura, because Laura brings a passion for a lot of
14 issues.

15 I could go through all of these, but I tried to
16 highlight in some of my handouts some of these issues.

17 A Regional Board member, there are nine of us. I
18 certainly haven't been in, like, the leadership role for quite a
19 few years.

20 We listened very carefully to Laura. There were all
21 kinds of advocacy groups in front of the -- advocacy for certain
22 positions in front of the Regional Board. Some of the things
23 that -- she talked about the two issues that I think are
24 important to talk about.

25 I really don't know how to talk about the violations
26 around the Bay any more, because the Regional Board staff and I
27 have gone through these records, too, and so I think we should
28 not debate that and just say we're all working on the Bay.

1 The DCE in the groundwater, in Escondido, a
2 manufacturing company had some kind of a spill of a solvent.
3 They spent nearly \$300-400,000 cleaning up the soil. They used a
4 high vac system, which was the highest technology available. In
5 vacuuming the soil, droplets of water made it to the
6 groundwater. Woodward Clyde testified that there was one-
7 thousandth of a teaspoon left in the groundwater.

8 We put a monitoring program on that -- that property.
9 They couldn't drink the well water. There are ten wells they
10 had to monitor.

11 Just this week, they found a spike, and they're going
12 to do a different kind of -- maybe it was -- did you know about
13 that?

14 MS. HUNTER: Uh-huh.

15 MS. FORSTER: Okay.

16 MS. HUNTER: There's a spike moving into the
17 groundwater.

18 MS. FORSTER: And they are now -- under the order,
19 they have to come back in and work on this. They're going to
20 try to do an air system, where they're going to throw oxygen
21 down into there and try to make the bio remediations, the bugs,
22 work better.

23 They're over \$500,000 now. They're still under
24 regulation. And the reason that, you know, that Laura appealed
25 it to the State Board, and the Chair of the State Board said
26 that the staff said that they didn't need to go. That's why
27 nobody was there.

28 And it is -- I mean, these clean-ups, how clean is

1 clean, and how safe is safe, are very tough issues.

2 So, that's still being cleaned up.

3 Chronic toxicity, the State Board was following --
4 the Regional Board was following the State Board's rule on
5 chronic toxicity. And we were in debate with EPA, and we have
6 now reached an agreement on it. And so, that was a hard issue
7 that we were going very heavy for, because the Marines wanted
8 that water so bad. We were trying to find a way for a net
9 environmental improvement. We were going to take waste water,
10 put it into a dry stream, give the Marines a new supply of
11 water, bank water in Fallbrook groundwater, they wanted it real
12 bad.

13 Acute toxicity, there's no question about. Chronic
14 toxicity, we were working out a fair process with EPA. EPA's
15 going to give that permit back to the Regional Board soon.

16 San Onofre, most of the issue was handled by the
17 California Coastal Commission. And there is a lot that -- and I
18 don't remember all the details, but there is a lot of
19 environmental mitigation that has to be done over San Onofre.

20 Point Loma, they had hired the best group in the
21 world, called Failure Analysis, to try to figure out why the
22 outfall broke. They found there was no negligence. They fixed
23 it in record-breaking time, and I have a newspaper here from San
24 Diego. It's the largest, deepest outfall now in the world.

25 Their attorney was leading me to believe that if we
26 forced a report, and independent report, they weren't going to
27 get their money from the insurers. It was -- they were asking
28 for \$8 million. They borrowed \$8 million from the state, and I

1 wanted the state to get back their \$8 million, and I knew the
2 report would be coming.

3 We usually don't do independent analysis. We just
4 tell people what they have to do to comply with the law. That
5 was a tough issue.

6 And I think beach closures, that's tough. The City's
7 got to build a whole new waste water system. It's going to cost
8 them \$4 billion, and everytime they drag their feet and things
9 don't happen, these spills happen.

10 Let's see, I don't know what else. I think I'm sort
11 of talked out.

12 Like I said, I don't really like to debate Laura. I
13 think Laura and I are on the same side as for interests, and I
14 think we're going to work great in the future.

15 CHAIRMAN LOCKYER: Thank you, Ms. Hunter.

16 MS. HUNTER: If I could just clarify one point. I
17 haven't had to talk as much.

18 EPA did say -- I can understand why the consultant
19 hired by the City might be inclined to say that there was no
20 negligence, or the EPA did say there was negligence and wanted
21 to take all their money back, because they have been negligent
22 in not maintaining the sewer system.

23 I think, you know, the medium is the message, or
24 whatever. The City has yet, not yet, gotten the message that
25 what they are doing in abusing their rights -- no, their
26 privileges; they don't have any rights to discharge into the
27 ocean. They have a privilege. They have not yet gotten the
28 message that we're not going to tolerate that.

1 And it is very bad down there. A surfer told me a
2 friend of his was in our ocean last year. He had a sore on his
3 arm. He pulled a worm out of his arm.

4 This should not be something that you contact when
5 you go swimming in the ocean. That's disgusting. And this is
6 the kind of problem that we've got down there, and we've got to
7 get it stopped.

8 And the Regional Board has got to tell the City that
9 they are not going to put up with all of these violations and
10 all of this mismanagement any more, and they haven't told them,
11 and that's our concern.

12 CHAIRMAN LOCKYER: Thank you very much.

13 Other opposition?

14 Maybe we better take a five-minute break.

15 [Thereupon a brief recess was taken.]

16 CHAIRMAN LOCKYER: Next witness.

17 MS. CLOSE: My name is Carol Close, and I'm from
18 Ramona, California.

19 It's a coincidence that hot dogs and nitrates have
20 been in the news recently. Hot dogs have nitrates -- nitrites.
21 But when you ingest nitrates, the acidity of your stomach
22 changes the nitrates to nitrites.

23 Epidemiologists are linking high rates of cancer and
24 leukemia in children to nitrates in hot dogs. Mary Jane Forster
25 and I, we also have a relationship over the issue of nitrates in
26 groundwater.

27 However, since 1975, nitrites [sic] in hot dogs are
28 within EPA, quote/unquote, "safe limits." In our valley, we

1 found out nitrate levels in our groundwater, which some of us
2 use as our only potable source of water, are as high as eight
3 times EPA safe levels for nitrates in drinking water.

4 My most important point I want to make today is that
5 groundwater is Southern California's only natural source of
6 water.

7 The reason why this should be of interest to all of
8 you guys, all of you Senators -- I don't mean to be -- can you
9 see your districts in here? Okay, it's an issue that's a
10 problem in all of California, in your district, too.

11 This is from the Nitrate in Drinking Water Report to
12 the Legislature, State Water Resources Control Board, October,
13 1988.

14 CHAIRMAN LOCKYER: Did you have some sort of
15 conviction or evidence as to Ms. Forster's disinterest or --

16 MS. CLOSE: Yes, I do.

17 CHAIRMAN LOCKYER: Okay.

18 MS. CLOSE: That's the reason why I'm here.

19 CHAIRMAN LOCKYER: We'll stipulate to the fact that
20 it's a problem now.

21 MS. CLOSE: Okay.

22 Mary Jane Forster has nothing to protect -- has done
23 nothing to protect our groundwater in our valley, and she has
24 done nothing to alert people of the threat to their health. I'm
25 not a lobbyist, but I'm a common well owner in a small rural
26 town where maybe hundreds and, who knows, thousands use well
27 water as their only potable source of water.

28 People are moving out to the country. They think, as

1 I did, that country living is clean and pure. They think that
2 city pollutes -- cities pollute.

3 The water in our wells looks great and tastes good,
4 but no one is responsible for testing wells. No one. Only
5 wells with connections of five or more, like a trailer park, for
6 instance, or a water district, are monitored for purity.

7 When my well was drilled, San Diego County tested my
8 well for bacteria only. My well water was, quote/unquote,
9 "listed as safe for drinking." However, they didn't tell me
10 anything about possible nitrate contamination.

11 Besides being found in hot dogs, nitrates are found
12 in fertilizer, and animal and human waste. The documented
13 number one source of nitrate contamination in groundwater is
14 municipal dumps. The number two source of nitrate
15 contaminations are dairies and cattle feed lots.

16 One cow is equal to 22 people in solid waste, and 17
17 people in nitrates.

18 Nitrates can kill a baby in as little as one day from
19 drinking formula mixed with water.

20 Should I wait for you, Mr. Lockyer?

21 CHAIRMAN LOCKYER: Please go ahead.

22 MS. CLOSE: There is, quote/unquote, "little margin
23 of safety" for infants at a concentration of 10 milligrams per
24 liter nitrates as nitrogen.

25 As I mentioned before, some of our wells are 8 times
26 this EPA limit, but we didn't know that.

27 Also, studies in the U.S.S.R. showed oxygen
28 deprivation in school-aged children. Numerous studies link high

1 rates of gastrointestinal and esophageal cancer in areas with
2 drinking water high in nitrates. In laboratories, mice
3 ingesting high nitrates developed cancer in every tissue and
4 organ.

5 I found out my well was contaminated while I was in
6 the hospital with the birth of my son, Colin. That was six
7 weeks before the hearing with Mary Jane. I found out my babies
8 can die at 10 milligrams per liter. Our well was twice the EPA
9 safe limit.

10 Okay, the reason my well was tested was that a
11 surrounding dairy, the Van Tol Dairy, was expanding, though
12 existing dairy groundwater was seriously contaminated.

13 The Board's initial report indicated the dairy was
14 the likely source of the pollution, and the magnitude of the
15 increased dairy operation had the clear potential to
16 significantly increase nitrate and salt concentrations.

17 There was serious negative public reaction. Numerous
18 experts testified at the public hearing where Mary Jane was the
19 Chairperson. The experts testified that the increased dairy
20 operation would further impact the water. Even the head of the
21 San Diego County Department of Planning and Land Use wrote his
22 concern over the impact of the expanded dairy operation.

23 The Municipal Water District was not there at the
24 meeting, as Mary Jane says. But he expressed his concerns
25 afterwards about the well water because there was a dairy waste
26 management policy that was going to be approved, and that's when
27 he expressed it, his concern about the dairy operations.

28 Testimony at the hearing showed the dairy did not

1 practice best management practices. In other words, they didn't
2 have holding ponds for their discharge; they didn't scrape off
3 the manure. It was a dairy feed lot with -- they had a permit
4 for 700 cows. They were over on their permit; they had 1200
5 cows.

6 Okay. Testimony showed they were over the number of
7 limits they were supposed to have. Testimony also showed they
8 were not in compliance with their waste discharge permits.
9 Testimony showed the dairy discharged in violation of EPA laws
10 to the tributaries to the municipal drinking water reservoirs of
11 Lake Hodges and the San Vicente Dam, both reservoirs.

12 At the hearing, we asked for an environmental impact
13 report to find out the source of the nitrates. Mary Jane
14 accused me of contaminating my well water with our septic
15 system.

16 We've since found out that it takes a density of not
17 more than one house for every 8 acres to impact groundwater.
18 Our house sits in the middle of hundreds of undeveloped acres.
19 Plus, subsequent studies by the San Diego State University
20 School of Public Health showed groundwater samples, and the hot
21 spots are in the dump and dairy neighborhoods, with the highest
22 levels directly at the dairies.

23 Human septic systems -- oops. I thought it was
24 upside down for a second.

25 Can you see it, Senator Ayala?

26 SENATOR AYALA: I can see it.

27 Can I ask you a question at this point?

28 MS. CLOSE: Yes.

1 SENATOR AYALA: You're from Ramona?

2 MS. CLOSE: Ramona.

3 SENATOR AYALA: In San Diego County, of course.

4 MS. CLOSE: Yes.

5 SENATOR AYALA: How large of an underground basin do
6 you have there?

7 MS. CLOSE: We -- we have a large underground basin.
8 and it's a large -- it's every -- hundreds of people use as
9 their only potable source, they use well water, and the wells
10 are running very -- you get a lot of water out of the wells.

11 SENATOR AYALA: From the information I have, most of
12 the water from the County is imported through the L.A. Water
13 District --

14 MS. CLOSE: Okay --

15 SENATOR AYALA: -- and there's no underground basin.
16 It's salt water down there, so what are we talking about?

17 MS. CLOSE: Well, what we're talking -- we're talking
18 about some of the -- the basin is this big and larger. And the
19 water district itself has six wells that they use for Municipal
20 Water District use. So that, that's why they expressed their
21 concern.

22 SENATOR AYALA: But you do have a small underground
23 basin?

24 MS. CLOSE: It's a large underground basin.

25 SENATOR AYALA: My understanding is that almost 96
26 percent of the water in the County is imported from the L.A. --

27 MS. CLOSE: That's true, but we also have -- we do
28 have enough well water that it's supplying people. It's not

1 dried up, as you would think, Senator.

2 SENATOR AYALA: You do have a small supply, but --

3 MS. CLOSE: Yeah, we sure do.

4 SENATOR AYALA: -- the vast portion of the water is
5 imported water.

6 MS. CLOSE: Right, but the well district, the
7 district itself has six wells that they use for -- and they
8 blend it with imported water.

9 Okay. Human septic systems produce an insignificant
10 amount of nitrates compared to a dairy. Remember, I was telling
11 you one cow is equal to seventeen people in nitrates.

12 The one dairy was producing more nitrates than the
13 whole population of Ramona with their 1200 cows.

14 Okay. Our town has a waste water treatment plant in
15 the center of town, and municipal water service to the center of
16 town.

17 The outlying areas, on larger acreages, are not
18 serviced by, you know, by the water district.

19 I argued, you know, to Mary Jane that an
20 environmental impact report would find the source of nitrates,
21 and I was concerned for the health of the people in our town
22 unknowingly drinking the water. Mary Jane Forster is on record
23 in the tapes responding immediately that people in agricultural
24 areas should drink bottled water.

25 Mary Jane Forster, as the Board's Chairperson, did
26 not uphold significant portions of the California Environmental
27 Quality Assurance Act. She disregarded the expert testimony,
28 the public's negative reactions and responses, and the health

1 and welfare of the majority of the people. She disregarded the
2 violations of the dairies, their permits, their discharges to
3 navigable streams, to public water supplies.

4 Mary Jane decided that the private for-profit use of
5 one resident outweighed the larger public good of the thousands
6 of residents and the local water district itself, which uses
7 well water for household and agricultural use. By allowing the
8 dairy to expand, she wrote off the whole basin as not worth
9 protecting.

10 Both law and policy state that the prime purpose of a
11 Regional Water Quality Control Board member is to preserve and
12 protect existing water supplies. A Regional Water Quality
13 Control Board member should be committed to nondegradation of
14 existing groundwater sources. And groundwater is Southern
15 California's only natural source of water.

16 Mary Jane Forster, as Chairperson, erred by allowing
17 the dairy expansion without further study, as the dairy was the
18 most likely source of the pollution. She failed to adhere to
19 the Regional Water Quality Control Board's own policies and
20 procedures. She didn't uphold significant portions of the
21 California Environmental Quality Assurance Act, and she opened
22 the door to further degradation of the quality of water in our
23 valley.

24 Afterwards, in the San Diego Union, Mary Jane said,
25 quote/unquote: "The environmental impact report is not required
26 because the Van Tol Dairy is not specifically responsible for
27 the pollution." She said, "The land is zoned for agriculture.
28 The Dairy also has its rights." She said, "It is a beautifully

1 operated dairy, and public opinion favors a new dairy over a
2 subdivision."

3 She also said, "We've never gone through an
4 environmental review process on the Regional Board, and the
5 Board lacks sufficient staffing to administer such a study."
6 She also said in the San Diego Reader that she was unaware that
7 the dairy was out of compliance with its waste discharge
8 permits, even though the fact was brought up at the meeting by
9 staff.

10 She also said in a Ramona Sentinel article that she
11 was unaware that the dairy was in violation of the Regional
12 Water Quality Control Board's waste discharge permits at the
13 time of the hearing.

14 The Board's initial report indicated the dairy was
15 the most likely source of the pollution, and the final report
16 was changed to say, quote/unquote: "Increased milk production
17 outweighs the potential unavoidable adverse environmental
18 affects."

19 Was Mary Jane's job to protect milk production at a
20 time when there were government buy-out programs in the San
21 Diego region? Farmers were paid to shoot their cows because of
22 over production of milk, which also kept milk prices
23 artificially high.

24 I feel people's health and lives were at risk for
25 unknowingly drinking that water. That far outweighs local milk
26 production.

27 Wasn't Mary Jane's job to protect groundwater and not
28 milk production? What if a petroleum tank is leaking? Will

1 Mary Jane feel it's her responsibility to protect the petroleum
2 industry?

3 Mary Jane wrote a fact sheet in response to a letter
4 of opposition, which a lot of people have heard today. In
5 response to number two, she says:

6 "In agriculture areas, people should give
7 their children bottled water."

8 She says, quote/unquote:

9 "FACT: [It's a] Misunderstood statement
10 taken out of context by the media."

11 The truth is, she really did say it to me at the
12 hearing in response to my concern about people's health drinking
13 the water. You can listen to the tape.

14 She said, fact: "Van Tol Dairy did not expand." The
15 truth is, she approved it, but I appealed and won the appeal.

16 She said, fact:

17 "Van Tol Dairy in Ramona Valley was
18 surrounded by poultry ranches; two million
19 chickens, and earlier 300,000 large
20 turkeys. Poultry ranches and increased
21 housing on septic tanks caused very high
22 nitrates in the groundwater."

23 The truth is, no poultry ranches have ever been within a mile of
24 my house, historically, any time whatever. The Regional Water
25 Quality Control Board's initial report also clearly indicated
26 the Van Tol Dairy was the most likely source. Poultry ranches
27 are in covered facilities where the manure isn't leached into
28 the groundwater by rain.

1 In this area right here, all the "Cs" are chicken
2 ranches. There is no groundwater contamination there.

3 CHAIRMAN LOCKYER: How far away is that?

4 MS. CLOSE: That's about, like, you know, six miles.
5 I would say seven miles.

6 Okay. This right here is a municipal dump. It's
7 actually up here, and it's leeching into this area.

8 These are the dairies right here that are leeching
9 through the stream beds. All the water is flowing through this,
10 following the stream.

11 This is the site of an old dairy that's no longer in
12 existence, and this is also a site of an old dairy that's no
13 longer in existence.

14 CHAIRMAN LOCKYER: Are all the little squares,
15 hatch-marked squares, are those the chicken or turkey ranches?

16 MS. CLOSE: These, the big ones right here -- this
17 one, and this one, and this one, and this one -- are the -- are
18 the dairies. These, with the "Cs", are the chicken ranches.

19 CHAIRMAN LOCKYER: How about the orange or the tan?

20 MS. CLOSE: The orange --

21 CHAIRMAN LOCKYER: Further up.

22 MS. CLOSE: Where? Excuse me? Up here?

23 CHAIRMAN LOCKYER: Yes.

24 MS. CLOSE: There's some chicken ranches right here.

25 CHAIRMAN LOCKYER: All right.

26 MS. CLOSE: Yeah, that's true, there are chicken
27 ranches there.

28 SENATOR CRAVEN: Where is the town center?

1 MS. CLOSE: The town center is right here, can you
2 see? There's -- right this part. And all the hatch-marks?
3 Okay?

4 Poultry ranches are in covered facilities where the
5 manure is not leached into the groundwater by the rain. Plus,
6 manure is hauled away, unlike the dairies -- unlike the dairy
7 operations were, I should say.

8 Also, the town wasn't built out densely enough in the
9 outlying areas for septic tanks and systems to impact
10 groundwater. The town center is serviced by sewers and a waste
11 water treatment plant, and the highest nitrate levels are at the
12 dairy. One cow is equal to 17 people in nitrates. The 1200
13 cows were polluting more than the whole population of Ramona.

14 She said also, fact:

15 "A young mother concerned about the
16 health of her children protested the
17 expansion of the dairy."

18 I was a young mother seven years ago,

19 "I was so disturbed about the lack of safe
20 drinking water for her family that I
21 pursued several alternatives, [that is],
22 installing .. water. Nothing was
23 available, therefore, I contacted US EPA.

24 "Nitrate/Nitrite US EPA 11.32, page
25 667 recommended [drinking (sic)] water
26 where there is no alternative source."

27 Okay, she's trying to make it sound like she tried to
28 talk to everybody to help me. Here today, she testified that

1 the Ramona Municipal Water District Manager was not at the
2 meeting; the fact is -- he was at the meeting. The fact is, he
3 was not.

4 She's trying to say that the engineers testifying
5 there were trying to help me. The fact is, the engineers were
6 on the side of the Van Tol Dairy, testifying to help the Van Tol
7 Dairy go into operation.

8 The truth is, she blurted it out to me as an opinion
9 to drink bottled water when I was saying, "Well, what about my
10 babies? What should we do?"

11 Bottled water is not an adequate substitute water
12 supply for affected groundwater users. By her voting for the
13 expansion of the dairy, she effectively wrote off the basin as
14 not worth protecting.

15 She said, fact:

16 "Because of this experience, I
17 sought and was appointed to the US EPA
18 National Drinking Water Advisory Council
19 to help draft the 1986 amendments to the
20 Safe Drinking Water Act (including
21 Groundwater Protection Strategy for the
22 Nation). (1990-1993)"

23 The truth is, she never even heard me 'til one year after, 1986
24 and 1987.

25 The truth is, Mary Jane is not telling the truth.
26 Mary Jane, as Chairperson, had significant influence over the
27 rest of the Board. She didn't care about the direct economic
28 cost in the lost use of well water as a potable source of water,

1 and the price of importing water, which will run into thousands
2 of dollars per household. She didn't care about the
3 incalculable human and moral cost of our unknowing exposure of
4 our infants and children and husbands and wives to water harmful
5 to their health.

6 She responded positively to one private for-profit
7 use of one resident over the health and welfare of the majority
8 of the people of the state.

9 Mary Jane has many supporters from water districts,
10 but there is not unanimous water district support all of her
11 decisions. One decision was to try and take out groundwater
12 monitoring from a dairy waste management policy; in other words,
13 to stop testing well water at the dairies. This is on record to
14 Don Maughn, Chairman of the State Water Resources Control Board
15 in October, 1988. Four water districts -- Rancho California,
16 Fallbrook, Camp Pendleton, and the Ramona Municipal Water
17 District -- were on record opposing her decision to take out
18 groundwater monitoring of dairies and the dairy waste management
19 policy.

20 Also, the Indian reservations, also, their only
21 potable source of water is well water. All Indian reservations
22 in Southern California use only well water. And they also
23 didn't agree with her decision. And I have letters to prove it.
24 I have them here, if you guys want them for the record.

25 CHAIRMAN LOCKYER: Thank you, Ms. Close.

26 I guess I'd like some response, please. I think it's
27 impossible for us to re-try a specific case that was heard years
28 ago, but with respect to the efforts you may have made, or

1 recommendation, to stop groundwater monitoring at dairy sites,
2 could you provide some explanation or elaboration with respect
3 to those issues?

4 MS. FORSTER: I don't know anything about that,
5 Senator Lockyer.

6 CHAIRMAN LOCKYER: Doesn't ring a bell?

7 MS. FORSTER: I don't remember that. I would like to
8 see that and understand it.

9 If the Van Tol Dairy people were here, you would see
10 another side of what happened to the dairies in San Diego
11 County.

12 Obviously, Carol is a very compelling, wonderful
13 advocate for doing something about groundwater. That's why I
14 didn't think about what I was saying and said what I did to her
15 about bottled water, because she's -- it's an emotionally moving
16 story.

17 There were 125 dairies when I became Chairman of the
18 Regional Board, and when I finished with all the regulation,
19 there are 25 left in San Diego.

20 If you could listen to the dairymen's side of how
21 awful I made their lives, how I forced them to move out of San
22 Diego, I think it would put a little bit of balance into this
23 situation.

24 They did have a holding pond. They were -- I went
25 out there with other Regional Board members and took a tour. I
26 don't think it was a feeding lot.

27 We did not do EIRs. Jose Hertado was in the audience
28 somewhere, because he knew that my heart was breaking for Carol.

1 So, like all Regional Board issues, there are two
2 sides. There are two sides.

3 And all I can say is, I don't -- I would never say no
4 groundwater testing unless there's a whole part of the story I
5 don't understand.

6 They were prohibited from discharging out of their
7 pond into any tributaries that would make it to Hodges
8 Reservoir, which was several miles away.

9 It was 1987, Senator, and I don't remember all the
10 things, but I remember Carol very well. And I truly, when I
11 went -- and John Gaston will attest to this -- when I went to
12 Washington, D.C., the first thing I wanted to know is, what are
13 we going to do about the nitrates in groundwater? She moved me.
14 She moved me today the same way she moved me then.

15 But I don't know what else to say. The dairies are
16 gone because of our regulations. I don't know what else to say.

17 CHAIRMAN LOCKYER: Senator Petris.

18 SENATOR PETRIS: Can you tell us the reasoning or the
19 grounds for the reversal of the dairy decision by the State
20 Board? Why the State Board reversed the local board?

21 MS. FORSTER: You know, I don't remember that that
22 happened.

23 After our hearing, the County of San Diego was in
24 charge of the land use. They were making the determinations
25 whether there was an EIR or not. There as no alternative for
26 some of the well owners in the area.

27 I talked to the consultant that did the Van Tol issue
28 recently and said, "What happened to Van Tol?" He said, "Your

1 requirements were so hard and so expensive, they never
2 expanded."

3 So, I don't -- I wouldn't know. As a Regional Board
4 member, I didn't always know what got appealed to the State
5 Board and what they did on it.

6 SENATOR PETRIS: I wonder if any of the prior
7 witnesses could clarify that for us?

8 The question is, there was a lot negative about the
9 dairy in prior testimony as well as now. And then we were told
10 that the State Board reversed the Regional Board.

11 Why did they do that? Can you explain?

12 MS. HUNTER: I haven't, like, read the transcript,
13 and I'm not sure exactly why, and I'll find Carol and bring her
14 back here.

15 But I know it was overturned on a unanimous vote, so
16 the decision of the Regional Board, which at that point was to
17 not -- to require no EIR -- and this is from my conversations
18 with Carol; as I say, I wasn't there -- and to, I think, allow a
19 waiver of waste discharge requirements -- but again, I'll ask
20 her -- was overturned by the State Water Board.

21 But it's my understanding that there still has not
22 been an EIR because the Van Tol Dairy was not allowed to expand.

23 CHAIRMAN LOCKYER: Anyone else in the audience that
24 may know the answer to Senator Petris's question?

25 SENATOR AYALA: Mr. Chairman, we might inquire if
26 anyone here represents the San Diego Water Authority is present,
27 so they can give us an idea of what these underground basins are
28 doing in that area? The gentleman over here.

1 Can you give us the extent of the underground basins
2 and the problems that the dairies have caused in that area?

3 I was under the impression that, again, to be
4 redundant, that very little water was generated locally. Most
5 of it came in from the, you know, the Metropolitan Water
6 District.

7 CHAIRMAN LOCKYER: "Again to be redundant" is
8 redundant.

9 Never mind.

10 Sir, go ahead.

11 MR. CLAY: Senator Lockyer, Members of the Committee,
12 I'm Ben Clay, represent the San Diego County Water Authority.

13 Yes, over 95 percent of our water is imported.

14 To give you a little history of the Ramona area,
15 there have always been a lot of problems associated with --

16 CHAIRMAN LOCKYER: What percent? I'm sorry.

17 MR. CLAY: Over 95 percent is imported from the
18 Metropolitan Water District and the State Water Project, and
19 from both either the Colorado River and/or the state system.

20 There are problems in the Ramona area with the
21 groundwater basin. You have a rural community that is -- one
22 day will be a city with a lot of the septic tanks. You have
23 dairies; you have the chicken ranches; you have a lot of the
24 agricultural types of activities are going on out there.

25 Recognizing that problem, we spent \$18 million here
26 just recently with the Ramona Water District to build a pipeline
27 to Ramona to bring potable water to them, knowing that that
28 groundwater basin, which is a small one -- and I knew when I

1 heard you ask the questions, Senator Ayala, I was sitting there
2 thinking, "Oh, my gosh, what is the size of that?" I don't have
3 that number off the tip of my tongue to tell you what the size
4 of that groundwater basin is, but it is not a large basin if you
5 were to compare it with some of the other groundwater basins
6 you'd find.

7 San Diego County as a whole has very small numbers of
8 groundwater basins. There's the Tijuana Basin, the San Pasquale
9 Basin, which is small. The Tijuana one is obviously degraded
10 with the intrusion of salt water and with problems from across
11 the border. We have the San Luis Rey River, which is a fairly
12 large one, but it also has problems with dairies and other
13 agricultural interests that have polluted it over the years, and
14 we're all in the process of trying to clean those basins up as
15 we proceed.

16 SENATOR AYALA: Of that five percent, what portion of
17 it is contaminated with the nitrates?

18 MR. CLAY: I can't answer that question, Senator. I
19 don't know.

20 CHAIRMAN LOCKYER: Senator Peace, is Ramona in your
21 district?

22 SENATOR CRAVEN: Do you want some information on
23 Ramona?

24 CHAIRMAN LOCKYER: Just to know where it is. Is it
25 north east?

26 SENATOR CRAVEN: Well, of San Diego? Yes, it would
27 be, I would say, in a general sense.

28 I had the distinct pleasure of serving Ramona from

1 1960 on for many, many years.

2 CHAIRMAN LOCKYER: Presley? Kelley's area?

3 SENATOR CRAVEN: It's Kelley now.

4 But Ramona is a place that would probably, back in
5 the days when I was up there, and I went a great deal, was the
6 type of town that they'd rather be left alone. A hell of a lot
7 of people living in Ramona come from Schamoca, Pennsylvania and
8 want to be ranchers, and like ranchers they want a horse, and a
9 lariat, and a big hat.

10 And, you know, wells and other things, and a little
11 old cow dung doesn't bother them at all. In fact, that's almost
12 a red badge of courage. They're Billy on the ranch.

13 Well, ranches don't have a lot of facilities that you
14 and I are used to living with. They don't, some of them, you
15 know, have sewer connections, or water connections.

16 And the town has grown despite itself, and it has in
17 more recent years had an influx of people. And there is a very,
18 very delightful housing development, golf course, country club
19 in Ramona, and I'm sure that's on a water line and a sewer line
20 as well; isn't it?

21 Do you know? San Diego County Estates?

22 MS. FORSTER: I don't know, Senator Craven.

23 SENATOR CRAVEN: You don't know. Well, that's two
24 things: nitrates and this.

25 You're not following me. Be that as it may, I met
26 this lady, whose name is Carol, out in the corridor there. In
27 fact, she came up and tugged at my coat, and I stopped to talk
28 to her.

1 And she told me that I was supportive as well as my
2 staff of the expansion of that ranch -- of the dairy there,
3 which meant absolutely nothing to me, be honest about it. I
4 said, "When was that?" She said, "1987." I said, "Well, I
5 haven't represented that area since 1973," so there's a little
6 bit of an interim in there where I have had very little power.

7 So, there's some things that she mentioned that I can
8 understand, and other things don't make an awful lot of sense to
9 me.

10 But I think you have to know the whole story. I
11 think you're just taking -- if somebody gets in here again and
12 tells us about she's saying you have to give babies bottled
13 water, I think I'm going to scream. I mean, once is enough.
14 We're doing a repetitive thing.

15 I have the most faith in you, but I'll tell you, as I
16 said to you earlier, I hope before the end of the day, you're
17 going to show us horns and tail, because it's just, to me, to
18 come in and hammer and hack away and be repetitive on things
19 that haven't, presumably -- and I hope that it's correct -- has
20 not killed anyone; hasn't hurt anybody.

21 Sure, there's always some thing off in the future
22 that may happen. We live with contingencies. Our very lives
23 are contingent. We may be here today, but unfortunately,
24 tomorrow I may not be. Who's to say?

25 We live with a lot of things, and I think of that
26 when I hear people talk about, "This is bad for you; that's bad
27 for you." Probably we have lived long enough to find out some
28 of those things are wrong.

1 But, you know, I've made it, God willing, for 72
2 years, and I'm very, very happy about that, and I'll never
3 forget the day my father showed me, in Philadelphia, where they
4 rehash water. I said, "What do you mean?" He said, "Well, they
5 take sewage and sludge, and then they process it, and that's
6 what we drink."

7 To a Philadelphian, there was never any doubt about
8 that because the water is the worst water in the world. But to
9 a little boy back in the early '30s, I thought, "How could that
10 happen?"

11 And here we are, still talking about it. I don't
12 know whether we've solved all the problems that are attendant to
13 that or not, but I just don't know whether, you know, heaping a
14 grief upon the Committee and upon the nominee, in particular, is
15 really going to settle anything.

16 CHAIRMAN LOCKYER: Senator, did you have any
17 questions of the nominee that you'd like to have her respond to?

18 SENATOR CRAVEN: Well, the only thing I would ask her
19 is, did you ever feel, you know, deep down within side you, why
20 the hell did you ever want this job?

21 [Laughter.]

22 CHAIRMAN LOCKYER: We've all asked that from time to
23 time.

24 SENATOR CRAVEN: You've been joined with my
25 colleague.

26 CHAIRMAN LOCKYER: I wanted to make this inquiry.
27 There are five members, I guess on the State Water
28 Board.

1 I'd like to hear you position yourself
2 philosophically, temperamentally, whatever manner is clear to
3 you, with the other four. Is there anyone with whom you tend to
4 consistently agree or disagree?

5 MS. FORSTER: Well, the simple answer is no, there's
6 no one that I tend to agree or disagree with.

7 I think that our Board is an outstanding group of
8 individuals, all representing different specialities. We have
9 our lawyer, Marc Del Piero. I think he's one of the greatest
10 humanitarians I've ever met.

11 We have Jim Stubchaer, and John Brown, and they're
12 both in the engineering slots and tremendously qualified,
13 working on really complex issues.

14 And then our Chairman, John Caffrey, is a statesman's
15 statesman.

16 I look at myself as a middle-aged, middle-class woman
17 who's raised four children, and who's walked and talked water
18 conservation, water reclamation, public health issues, safe
19 drinking water issues, for 20 years.

20 I said yes to this because I wanted to do some public
21 service. I understand the concerns raised today. There are
22 stories within stories; they're very complex.

23 I guess that I just want to say that I think we all
24 have the same interests. I don't believe in conflict across the
25 table. I think we all have the same interest, and I think that
26 I'm a people's person, and I'll do everything I can do help.

27 I'm very accessible to the public. I go anywhere,
28 anytime, to meet with people. I'm working with people from San

1 Gabriel Basin. Fifteen small businessmen have to do an \$8
2 million clean-up, and they're frustrated.

3 I go all over the state, trying to help people
4 understand why we have to regulate, and what we have to do to
5 protect, and what we have to do to clean up.

6 So, I don't know what else to say, Senator, except
7 I'm just my own person, to the answer of how do you connect.
8 And we all are mature individuals with a lot of experience,
9 trying to make it a better place for California.

10 CHAIRMAN LOCKYER: What was the most difficult vote
11 or decision you had to make during your service on the State
12 Board?

13 MS. FORSTER: Some of the water rights decisions are
14 very tough.

15 CHAIRMAN LOCKYER: Any particular one?

16 MS. FORSTER: Well, I remember one where I made the
17 decision come out better. It was a very, very, very long debate
18 over a river or creek in Napa Valley. And it took years of
19 contentious litigation and lawyers. And a Native American woman
20 came, and she was just a beautiful woman. And she felt that her
21 lawyer didn't represent her well enough, even though she agreed.

22 She was there, and she said, "I have a sweat lodge,
23 and I need water in my stream, and I see water in all the other
24 streams, and I don't know why it's not meeting our area."

25 And it was so contentious that you really didn't want
26 to open it up again. It had taken years, and years, and years,
27 and she had signed the agreement.

28 But I thought, hey, we can go an extra mile. Let's

1 look at this.

2 So, we took a recess, and I said to staff, "Please,
3 find a way to get the other parties to agree to help this
4 woman." And they came back after lunch, and we took the item up
5 again.

6 And they -- she was so happy. It worked. It was --
7 there are a lot of issues like that.

8 And I met the attorney later from our staff who
9 handled it, and he said, "I died when you said to do that, but
10 I'm so glad we did it."

11 CHAIRMAN LOCKYER: That was the toughest one?

12 MS. FORSTER: That was one of the toughest.

13 CHAIRMAN LOCKYER: Senator Petris, anything further?
14 What's the pleasure of the Committee?

15 I thought we'd heard from all the witnesses, I'm
16 sorry. Are there more?

17 Senator Craven.

18 SENATOR CRAVEN: Would the Chairman please remind the
19 witnesses to keep it as brief as possible?

20 CHAIRMAN LOCKYER: How many more are there? Two
21 additional.

22 Members, Floor session has been postponed until 6:00
23 p.m., but I still hope we can complete our agenda before that,
24 if possible.

25 MS. JENNINGS: Jennifer Jennings, General Counsel,
26 the Planning and Conservation League.

27 We're here to oppose the confirmation of Ms. Forster
28 because we reviewed the information that the local

1 environmentalists prepared regarding her confirmation, and
2 verified that these things did, in fact, occur.

3 And I won't repeat the reasons that we think that she
4 should not be confirmed, because they have been stated here.

5 But I want to point out one thing that she said just
6 a few moments ago, which really stunned me, which was that "we
7 did not do EIRs".

8 That means that in her 10 years on the Regional
9 Board, they did not consider a single project that they, in
10 their mind, thought had the potential to have significant
11 adverse environmental affect, or, secondarily, they violated
12 CEQA.

13 And I'm really very concerned about that attitude,
14 because an EIR is really a public information document, and a
15 document that allows for public involvement, particularly in
16 water quality issues, very technical issues.

17 So, we, I guess, still oppose Ms. Forster's
18 confirmation as the public member of the State Water Resources
19 Control Board.

20 Thank you.

21 CHAIRMAN LOCKYER: Thank you.

22 MS. FORSTER: I misspoke.

23 The Regional Board never initiated EIRs on dairies.
24 They were usually done by the land use agency, and we would
25 comment, but we didn't -- we were being asked to -- if I can
26 remember, we were being asked to do an EIR, and that wasn't the
27 typical role of the Regional Board. We responded to EIRs, but
28 we didn't initiate EIRs, or do them ourselves.

1 MS. JENNINGS: Well, there would be many cases in
2 which the Regional Board would be the lead agency for projects
3 when they needed waste discharge permits, and did you then, your
4 agency --

5 MS. FORSTER: We didn't do the EIRs. The agency
6 submitting the application for a permit does the EIR.

7 It would be wrong for us to do an EIR on a waste
8 discharge treatment plant.

9 MS. JENNINGS: No, you are the lead agency if you're
10 approving that project for, say, a publicly owned treatment
11 works, and they -- it should be the Regional Board's EIR in that
12 case.

13 MS. FORSTER: I don't know --

14 SENATOR CRAVEN: I think there's a semantic problem
15 here.

16 I understand what the witness is saying.

17 Are you saying, in effect, that the Board of which
18 she is a member should physically do the EIR?

19 MS. JENNINGS: They either do it in-house, or via
20 contract with consulting agency.

21 SENATOR CRAVEN: Well, I think that's what the Board
22 member is saying.

23 MS. JENNINGS: The applicant itself does not do the
24 EIR.

25 SENATOR CRAVEN: The Board member is saying that they
26 do it by contract.

27 Am I correct in that, Ms. Forster?

28 MS. FORSTER: Uh-huh. I may have to ask Tom, Tom

1 Jones our legislative person.

2 MR. JONES [FROM THE AUDIENCE]: I don't know the
3 answer to that.

4 MS. FORSTER: I don't know.

5 I just know that we never -- I didn't mean -- of
6 course, we look at EIRs. Our whole world is about the economic
7 environmental impacts.

8 I can't -- I misspoke, and to tell you the truth, I'm
9 so tired, I don't know how to intelligently answer you.

10 MS. JENNINGS: I understand that. I can understand
11 that.

12 SENATOR CRAVEN: Sure.

13 SENATOR AYALA: I believe that the lead agency has
14 the responsibility of the EIR, and they can make a negative
15 declaration. That's the end of it.

16 So, I don't know if the Board was the lead agency or
17 not on this project.

18 MS. JENNINGS: Well, I would think within a ten-year
19 time period, the Board would certainly have been a lead agency
20 in a number of projects.

21 But, I can understand her misspeaking. I just was
22 really struck by that, by that statement.

23 As I said previously, we did review the allegations
24 that were made by the local environmental groups, and did
25 believe that they were supported by the record, and oppose her
26 confirmation as the public member of the State Board.

27 Thank you.

28 CHAIRMAN LOCKYER: Thank you.

1 Next witness.

2 MR. GOITEIN: My name is Ernest Goitein, and I'm with
3 the Peninsula Conservation Foundation of Palo Alto.

4 And of course, we're very interested what kind of a
5 person represents -- is represented on the State Board.

6 I also served for a couple of years on the San
7 Francisco Bay/Delta Estuary project, as well as the South Bay
8 Coalition to Clean Up the South Bay.

9 And I'm not that familiar with the details of what
10 happened in San Diego, but I look at the institutions and
11 witnesses that have supported Ms. Forster's confirmation.
12 They're all water districts, that is, organizations that, in
13 effect, are required to get permits. So, there is a
14 relationship there.

15 Whereas, the public -- the public at large, the
16 environmental organizations, have not supported her. So, that
17 certainly has influenced my thinking.

18 Also, some of the testimony I heard today about the
19 hazardous waste strike force removed the San Diego Regional
20 Water Quality Control Board is pretty -- pretty astonishing to
21 me, and that only one percent enforcement on water quality
22 violations, again, that is pretty astounding.

23 Certainly, our Regional Water Quality Control Board
24 has a much better record than that.

25 So, just -- you've heard the issues before. They
26 were brought out by previous witnesses. I think there are a lot
27 of good people in this state that can represent the interests,
28 water interests, of the public.

1 And I'm sorry to say, I don't feel Ms. Forster is
2 suitable for that position.

3 CHAIRMAN LOCKYER: Thank you, sir.

4 MS. FORSTER: Can I say one thing, Senator, for the
5 San Diego Regional Board?

6 There are a lot more than one percent. I don't
7 understand that fact, but they just don't have one percent
8 compliance.

9 MR. PAPARIAN: Mr. Chairman, Members, I'm Mike
10 Paparian, representing the Sierra Club.

11 I won't repeat any of the testimony you've heard.
12 I'll just say that we believe that Californians deserve somebody
13 on the State Water Board who has a stronger record of commitment
14 to the protection of state waters and water quality in the
15 state. We don't think that that record of commitment exists
16 with Mary Jane Forster.

17 Thank you.

18 CHAIRMAN LOCKYER: Thank you.

19 Any additional questions before I call on Senator
20 Craven for a motion?

21 Ms. Forster, did you wish to say anything in
22 conclusion?

23 MS. FORSTER: No. The water districts that I worked
24 with didn't get permits from our regulatory agency.

25 My district that I worked with were the clean water
26 wholesalers of imported water, Metropolitan. So, I just wanted
27 the record to reflect, I never had a conflict over permits. I
28 didn't work for any waste water treatment plant.

1 CHAIRMAN LOCKYER: Okay, Senator Craven.

2 SENATOR CRAVEN: Thank you, Mr. Chairman.

3 I'd like to move the nomination of Ms. Forster to the
4 Floor.

5 CHAIRMAN LOCKYER: Is there any discussion? Are you
6 ready for the vote?

7 Let's call the roll, please.

8 SECRETARY WEBB: Senator Ayala.

9 SENATOR AYALA: Aye.

10 SECRETARY WEBB: Ayala Aye. Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Beverly Aye. Senator Petris.

13 SENATOR PETRIS: No.

14 SECRETARY WEBB: Petris No. Senator Craven.

15 SENATOR CRAVEN: Aye. Senator Lockyer.

16 CHAIRMAN LOCKYER: No.

17 SECRETARY WEBB: Lockyer no. Three to two.

18 CHAIRMAN LOCKYER: The matter is reported to the
19 Floor by a vote of three to two.

20 Thank you.

21 MS. FORSTER: Thank you, Senators, very much.

22 CHAIRMAN LOCKYER: Our next appointment is Mr.
23 Shansby. I think we can probably deal with that in a short
24 amount of time without necessitating putting it over to another
25 day. It's probably worth giving it a try.

26 Good afternoon.

27 MR. SHANSBY: Good evening.

28 CHAIRMAN LOCKYER: Do you want to begin, sir, with

1 any kind of general summary?

2 MR. SHANSBY: Thank you, Mr. Chair. I hope this is
3 brief. I know now more about waste water than I thought I'd
4 learn in my lifetime.

5 I am 56 years of age, which makes me a middle-aged
6 person. I live in San Francisco. I'm a graduate of an out of
7 state institution, the University of Washington, in 1959 in
8 Seattle.

9 My wife is a graduate of the U.C. system. My
10 three children are graduates of the U.C. system: three from
11 U.C.L.A. and one from Berkeley.

12 I have a personal long history as a businessman of
13 association with higher education. My business career, which
14 Senator Petris knows, was with Shaklee Corporation, where I was
15 Chairman and CEO for eleven years, and for the past nearly seven
16 years have been the investor in a company called the Shansby
17 Group, which invests in a venture capital style support of the
18 growth of small consumer businesses.

19 Back and more importantly to higher education, I was
20 the Chair of the Review of the Master Plan for Higher Education
21 for four years, a complete review of the strength of the system
22 of education in the State of California. I have been distressed
23 in recent years with the problems in the budget, and the impact
24 on higher education, but I was the Chair of that Commission and
25 proud to have served the state in that way.

26 I funded a chair in marketing strategy at the
27 Graduate School of Business at the University of California at
28 Berkeley. I served as a Trustee of the U.C. Berkeley Foundation

1 and of the U.C. Business School Board in Berkeley. I was a
2 Trustee out of state at Springfield College in Massachusetts. I
3 was a Trustee at St. Mary's College in Moraga in Contra Costa
4 County. I was a Trustee of the University of San Francisco and
5 was the Chairman of the Education Committee for the California
6 Round Table.

7 Suffice to say, I have a long history of over 25
8 years of involvement in higher education as a businessman,
9 because I believe there is no issue, including waste water, any
10 more important than the education of the citizens of California.

11 This is a second appointment for me as a Trustee to
12 the University system. I fulfilled the unfulfilled term of a
13 prior Trustee, and again I'm in the pick-up, clean-up role of
14 filling out the term of another Trustee.

15 I was the Chair -- I was Vice Chairman of the Board
16 of Trustees of the California State University, and was the
17 Chairman of the Search Committee that selected and brought in
18 for confirmation and then elected Chancellor Barry Munitz for
19 the C.S.U. system.

20 That is briefly my background as a businessman and in
21 education. I'd be pleased to respond to any questions the
22 Senators may have.

23 CHAIRMAN LOCKYER: Well, let me just inquire first if
24 there are people who wish to speak either for or against the
25 confirmation?

26 That may make it shorter; mostly us.

27 MR. SHANSBY: I believe I'm alone here.

28 CHAIRMAN LOCKYER: Senator Petris.

1 SENATOR PETRIS: It's good to see you again.

2 MR. SHANSBY: It's good to see you again, sir.

3 SENATOR PETRIS: Our acquaintance goes way back to
4 the Shaklee.

5 Are you still with Shaklee?

6 MR. SHANSBY: No. Shaklee was unfortunately acquired
7 by a Japanese corporation, and I left just prior to that, and
8 I'm now a citizen of California working more or less as a
9 venture capitalists.

10 I miss Shaklee, but I still take the vitamins.

11 SENATOR PETRIS: We need venture capitalists right
12 now.

13 MR. SHANSBY: We do.

14 SENATOR PETRIS: In fact, our budget needs them.

15 MR. SHANSBY: We need a lot of help.

16 SENATOR PETRIS: If you can help us out.

17 I have a couple of questions in two areas. One is
18 on the fee.

19 I've been a strong opponent of increasing our student
20 fees at the U.C. and Cal State system. I wasn't able to prevail
21 in my own Subcommittee on the Budget, so I guess that's just
22 academic right now.

23 We have repeatedly been told by Cal State
24 representatives at our Budget meetings that they have a design
25 and a plan for calculating the cost of education and having the
26 students pay one-third of the cost, and then assess the fees
27 accordingly.

28 Now, we've never approved that in any statute or in

1 any budget process, but they keep saying that everytime they
2 come before the committee.

3 Are you familiar with that?

4 MR. SHANSBY: Vaguely familiar with it. It's a
5 complicated formula, I believe, to come upon.

6 I think that everyone is searching to find the
7 solution in this shortfall of the budget to take care of the
8 students. I could talk about fees, but I'm not familiar enough
9 with that proposal.

10 SENATOR PETRIS: Well, I'm glad to hear that,
11 actually. Maybe it means it hasn't been universally accepted
12 yet by the Board, but the people who came before us contended
13 that that was the plan of the Cal State Trustees. And we asked
14 them in committee, where'd that come from? It hasn't been part
15 of our -- that's so significant that it should probably be
16 submitted to us for approval or disapproval.

17 Anyway, what is your feeling on this constant
18 increase in fees? Cal State students in particular took a
19 terrible beating. You know, in addition to closing down 12,000
20 courses, and then charging students more for what's left, so
21 instead of getting through in four years, it's now going to be
22 six or seven years. There's less courses; there's less
23 teachers. And yet, we're socking them with an enormous increase
24 over the past two or three years.

25 MR. SHANSBY: Well, it's a very, very complex
26 problem. Having worked 40 hours a week and put myself through
27 the University of Washington in four years, I can attest to how
28 difficult it is to come up with the money to finance an

1 education.

2 On the one hand, the State of California ranked in
3 the past in the bottom two in the cost -- in the contributions
4 by students to the cost of education. Or, looked at another
5 way, the fees that they were paying were quite low.

6 I think that was an advantage to the students, and it
7 would be awfully nice to continue.

8 On the other hand, the State of California -- and you
9 people know much better than I do -- are facing a very serious
10 budget crisis that, unfortunately, is probably not likely going
11 to get better in the near future. And I think it's a problem of
12 where do you come up with the education, and how you come up
13 with support for the education.

14 My personal feeling is that the C.S.U. system, as the
15 biggest system in the state, producing most of the undergraduate
16 students for California and certainly most of the teachers, must
17 never suffer in quality. And I think it's a three-part
18 solution.

19 One is, and I think we've probably gone as far as we
20 can, is on student fees.

21 Second is in some sort of tax relief that brings in
22 higher support for the University systems.

23 Thirdly is coming up with the kind of student aid
24 support that really compliments the process.

25 And I think that each end goes around biting the
26 other one. I don't know the solution. I bleed for the
27 students. Having paid it myself all the way through and made my
28 own children work to earn their educations, I'm reluctant to

1 take the fees up any more.

2 Now, on the other hand, they are low, or were low in
3 the past compared to the other states in the United States.

4 I think the answer really lies somewhere in a blend
5 of increased taxation and in the student aid support that we
6 need to be able to help with the financing of an education.

7 SENATOR PETRIS: Does the Board ever talk about
8 recommending an increase in taxation to the Governor?

9 MR. SHANSBY: To the best of my knowledge, the Board
10 has not done that as a Board, but I believe, as unpopular as the
11 subject is, that individuals on the Board have talked to the
12 Governor, yes.

13 SENATOR PETRIS: What percentage? All of them, one
14 of them?

15 MR. SHANSBY: Well, most of the appointees currently
16 as Trustees were appointed by a Governor that was a Republican,
17 and I would think that more than a handful have talked to the
18 prior Governor and the current Governor about that.

19 I think that the fact that the current Governor did
20 take what appeared to his own party to be an unpopular move when
21 he first come into office was applauded by some people because
22 of the support it gave to the higher education and all of
23 education in California.

24 And I believe that it's a three-part problem. Part
25 of it is taxation; part of it is student aid; and part of it,
26 unfortunately, is student fees.

27 SENATOR PETRIS: Well, I think you've described that
28 very well. It just seems to me that on two of those, we've

1 reached the limit. One is student fees, and the other is
2 student aid that accompanies the student fee. Everytime we
3 increase the fee, we up a portion, a third of that fee, for
4 student aid.

5 The other part of the equation just hasn't been
6 addressed. The climate has been very well composed by the prior
7 Governor and other Governors before him, and Presidents of the
8 U.S.

9 They've reached the point -- and I think it's a
10 serious thing because of the way it reflects on our academic
11 community and our capacity to sustain it in the manner to which
12 we had been accustomed and made education accessible to the
13 maximum number of qualified students -- it seems to be a capital
14 offense to use the word "taxes". We don't even use it any more;
15 we just say "the T word". That's supposed to be funny, and we
16 all laugh when we hear it, but I think it's ridiculous.

17 I think the Governor has done a lot to help higher
18 education as much as he can. He stuck his neck out in his first
19 year, and he got clobbered by his own party in the convention in
20 the second year of his office.

21 I think it's up to a lot of us, beginning with your
22 Trustees and the U.C. Regents and us in the Legislature, to
23 create a better climate that would help the Governor. He's out
24 there all by himself, and he got hit very hard.

25 If we had a lot of other people saying to the public,
26 "Taxes aren't all that bad. You want your kids to go to
27 college, you're going to be hit with a much higher tax because
28 it's not true we haven't been raising taxes. We have been

1 raising taxes on the students, which means on their parents as
2 well." And it reaches a point where it just drives a lot of
3 people away from the University, even though we have the student
4 aid program. The sticker shock that the student sustains on
5 learning what the fees are, it's not removed by the fact that,
6 well, a third of that is going to go to help, maybe, you. You
7 know, maybe you're going to be eligible for that help.

8 So, I would encourage you. My whole point is, I
9 would encourage you and the other members to talk to the
10 Governor, and let him know that you would support him, you know,
11 as a very important group in this whole education scheme in
12 California. And I think the more people in the public
13 limelight, at least public responsibility, who give
14 encouragement in that direction, the more likely the Governor is
15 to go along.

16 I can see why he's gun-shy. He took some terrible
17 criticism. In fact, his own party said they wouldn't endorse
18 him for re-election. I don't know if they're changed their
19 minds, but that's enough to deter any person from pursuing a
20 particular goal.

21 If the climate is improved, instead of everybody
22 saying, "I don't want to hear the word 'taxes'; no taxes under
23 any circumstances, no matter what the price is going to be
24 toward the quality of our education," well, then, we're going to
25 go down the tubes.

26 If people start saying, "Wait a minute. We can
27 afford a little bit more. We can afford it in this way and
28 that, let's try it," I think we can turn it around.

1 MR. SHANSBY: Senator, I applaud what you're saying.

2 My whole direction, and I didn't ask for this
3 appointment, I didn't seek it out. I've served long and hard
4 for higher education because I believe it's important.

5 When I was the Chair of the Master Plan Review
6 Commission, I made it clear to all of the Commissioners that I
7 didn't want to talk any politics; that the bottom line was the
8 our client was the student, and education was priority number
9 one.

10 I feel that way about the C.S.U. And whether it's
11 taxes, or student aid, or fees, what comes first is making sure
12 that our students are served as the client, and that the State
13 of California is served by improving education.

14 And I think we all have to work on that, and I will
15 continue to do what I did. The last time I was here I talked
16 about that as well. I don't think we're far apart on that at
17 all.

18 SENATOR PETRIS: Thanks.

19 MR. SHANSBY: Thank you, Senator.

20 CHAIRMAN LOCKYER: I would with to ask you the
21 questions that are posed by Senator Hayden's letter to us, which
22 you've probably seen a copy of. Essentially, it suggests that
23 there's a pattern during your tenure, Mr. Shansby, of voting for
24 student fee increases, and at the same time or almost the same
25 time, voting for various forms of executive compensation.

26 So, maybe for the record, you could talk with us
27 about that for a minute. As a way to perhaps discipline the
28 discussion, I have three or four points that are made to us.

1 Perhaps if you could reflect on any of them, or indicate well,
2 that was a hard one, or that was an easy one, or some way in
3 which we could understand your approach to these problems and
4 philosophy.

5 The first that we're informed of is, in October of
6 last year, voting to increase student fees rather substantially,
7 and then at the next meeting, approving the increase in housing
8 benefits for University presidents.

9 MR. SHANSBY: Mr. Chairman, Senator Hayden and I had
10 a chat earlier today, and it was the first time I had seen the
11 letter.

12 I pointed out some inaccuracies, and he submitted a
13 revised letter later in the afternoon. He had not recalled that
14 I had a long record of service in higher education. He hadn't
15 even recalled that he and I had worked together on the Master
16 Plan in Joint Committee. I was sorry that I wasn't more
17 rememberable than that.

18 CHAIRMAN LOCKYER: I wasn't going to ask you about
19 his general --

20 MR. SHANSBY: Okay.

21 About the fee increases, the quotes are accurate. I
22 did vote the way he states, and I did at a time when the State
23 of California was listed number 50 in the cost. I set as my own
24 limit that the State of California should never be average or
25 above average. It always should be below average in the cost
26 compared to all other states in the country.

27 I did this at a time when I felt that there would be
28 greater deterioration in the California State University if some

1 fee increases weren't implemented. I felt very, very strongly.
2 As a student, I think I am one of the Trustees who is, perhaps,
3 closer in my views about recognizing the student as the client
4 of the University, but it's painful to do these things. I know
5 it because of what I went through myself.

6 But yes, he's right on that. I did vote to increase
7 it.

8 CHAIRMAN LOCKYER: What would be average? Can you
9 recall what that dollar amount would be?

10 MR. SHANSBY: The average, I don't recall the
11 specific numbers, but they were at least 30 percent above the
12 tuition or fees -- some states call it tuition -- of the C.S.U.
13 The average was at least 30 percent above.

14 In other words, the growth of California, the
15 strength of our economy had made California such a rich state in
16 education that we were able to go by for years and years and
17 years without adjusting cost. We all know what happened.

18 What I had set as my own parameter is that we should
19 never be up to the midpoint. We should always be below it. In
20 other words, always a better ride.

21 CHAIRMAN LOCKYER: Wouldn't that permit significant
22 increases still? We're not at the midpoint.

23 MR. SHANSBY: I think there have been plenty of
24 increases, and I think that both Houses up here wrassle with it
25 every year as well. And I think that once you get beyond
26 something above the cost of living, you get into areas of
27 danger.

28 We saw the student feeling in the last increase, and

1 I don't want to be locked into any specific increase, but when
2 we're talking about, as Senator Hayden said, 24-30 percent, that
3 was a long way to go. I don't think we need to make it up in
4 that big a jump.

5 As I said to Senator Petris, it comes back to really
6 three areas: student aid, student fees, and taxes or support
7 from the state. And I don't think there's a real reason to do
8 this any more than we have to. And I think it's a balance of
9 those three things.

10 Answering the second question, I did approve both a
11 package to increase salaries for presidents, which is covered
12 letter -- later in his letter, and with the housing. And the
13 reason I did that is, in a complete review -- and I had at my
14 disposal all of the studies of four years of working on the
15 Master Plan Commission -- of the costs and the salaries and the
16 support that are given to comparables across the country. It
17 was deplorable at what level we were holding the presidents and
18 the key administrators in this system and other systems in this
19 state.

20 What I wanted to see is not that these people got
21 such a rich income or support system that they had it easy, but
22 I wanted to make certain that we gave them the kinds of
23 increases that prevented the exits of these people from the
24 state to move elsewhere, where they would earn competitive wages
25 and do much better. That's one of the beginnings of the
26 deterioration of the system happens when you lose the key
27 people: professors, support groups, presidents, vice
28 chancellors. And we were deplorably low.

1 Another, just an aside, is I think frequently the
2 California State University gets tied in with a view that people
3 have about the University of California, and that's unfortunate.
4 I think there's vast differences in these two systems, but I did
5 support these two things.

6 CHAIRMAN LOCKYER: Are there other questions from
7 Members of the Committee?

8 I guess I would ask for any comment that you might
9 provide us on faculty workload, what the controversies may be
10 that you've been involved in, what your perspectives are with
11 respect to the workload?

12 MR. SHANSBY: Well, when you're dealing with
13 faculties and the Faculty Senate, on the one hand you have
14 professors in the University system that I believe are qualified
15 better than anyone in the country to provide baccalaureate and
16 undergraduate education and degrees in education. But faculties
17 tend to want to have less of a load and more time for research.

18 Quite frankly, I think that the balance of the time
19 ought to be spent in teaching with the students, and in meeting
20 with the students, and counseling. And so, I happen to be an
21 advocate for the student, and I believe that the teaching loads,
22 if you make them any lighter, you're going to have increased
23 cost to the system, which is a burden or problem we already
24 have.

25 Now, it's very different at the University of
26 California, where research is so predominant. But C.S.U., I
27 think the workloads, the faculty will always complain about it,
28 and the administration will always want to find a balance.

1 But I think that the balance should always go in
2 favor of teaching and counseling to the students.

3 CHAIRMAN LOCKYER: Other comments? Senator Ayala.

4 SENATOR AYALA: Yes, I was just going to ask, have
5 you noticed any decrease in the recruiting of students,
6 especially the minorities, because of the increase of the fees?

7 MR. SHANSBY: Not to my knowledge.

8 I think that the C.S.U. has an aggressive program for
9 maintaining quality, at the same time providing access, and
10 then, through access, success -- in other words, graduation.

11 I haven't really seen, as a Trustee, any
12 deterioration in that.

13 SENATOR AYALA: Are the programs in place that the
14 students can avail themselves that can help them with their
15 fees?

16 I understand that a portion of the fees will go back
17 to the students in terms of loans, and those kind of things. Is
18 that the way it's working?

19 MR. SHANSBY: Well, it's a tough balance, but I would
20 -- I would like to continue to probe into the area of student
21 aid to see for those students that have the greatest need and
22 can't pay, that we find increasing programs to support it so
23 that they not only have the access, but the success.

24 SENATOR AYALA: But a portion of the fees do go back
25 to assist the students?

26 MR. SHANSBY: That's correct.

27 SENATOR AYALA: The needy students.

28 MR. SHANSBY: That's correct.

1 Thank you, Senator.

2 CHAIRMAN LOCKYER: I'll pose a question, similar to
3 one that I had asked the previous nominee, if there's someone on
4 the Board with whom you would tend to most frequently agree or,
5 perhaps, occasionally disagree, to give us a sense of your own
6 perspectives?

7 MR. SHANSBY: Mr. Chairman, I believe I am probably
8 the most independent member of that Board. I served as Vice
9 Chair after Chancellor Reynolds left the system. I was involved
10 in those committee meetings. I served as Chair to bring in
11 Senator Munitz. I didn't volunteer for either one of those
12 jobs.

13 I believe I'm the only Vice Chairman ever to serve
14 the University where I didn't ascend to the Chairmanship because
15 it was not my desire. I was not looking for the recognition.

16 Once again, my strongest belief is in the students
17 and the education, and so I don't believe that there's probably
18 anyone in the system any more independent than me.

19 And I could encourage all Trustees to stand up for
20 what they believe in, but to also make certain that they put a
21 continuation of the great education of this state first and
22 foremost, which is the students.

23 No, there is no one that I -- I relate to all of
24 them. I understand them. I'm not afraid of them, but I'm
25 pretty independent.

26 CHAIRMAN LOCKYER: Thank you.

27 I think we're at the conclusion. We need with --
28 Senator Petris.

1 SENATOR PETRIS: I wonder if we could put it over for
2 one week, next meeting?

3 CHAIRMAN LOCKYER: Yes, that's routine, vote only.

4 SENATOR PETRIS: Vote only, yes.

5 CHAIRMAN LOCKYER: That will be until our next
6 meeting, a vote only.

7 MR. SHANSBY: Not my presence?

8 CHAIRMAN LOCKYER: You're certainly welcome to come.

9 MR. SHANSBY: I will leave it in your hands.

10 CHAIRMAN LOCKYER: Thank you very much.

11 MR. SHANSBY: Thank you, sir.

12 [Thereupon this portion of the
13 Senate Rules Committee hearing
14 was terminated at approximately
15 5:35 P.M.]

16 --oo0oo--
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EVELYN J. MIZAK
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1 APPEARANCES

2 MEMBERS PRESENT

3 SENATOR WILLIAM LOCKYER, Chair

4 SENATOR WILLIAM CRAVEN, Vice Chair

5 SENATOR RUBEN AYALA

6 SENATOR ROBERT BEVERLY

7 SENATOR NICHOLAS PETRIS

8

9 STAFF PRESENT

10 CLIFF BERG, Executive Officer

11 PAT WEBB, Committee Secretary

12 RICK ROLLENS, Consultant on Bill Referrals

13 NANCY MICHEL, Consultant on Governor's Appointments

14 ALSO PRESENT

15 RUSSELL S. GOULD, Director
16 Department of Finance

17 LARRY MCCARTHY
18 California Taxpayers Association

19 DOUG WILHOIT, President
20 California State Association of Counties

21 SENATOR DAN BOATWRIGHT

22 SENATOR QUENTIN KOPP

23 EUGENE L. FREELAND, Member
24 Board of Directors
25 Hastings College of the Law

26 MAUREEN E. CORCORAN, Member
27 Board of Directors
28 Hastings College of the Law

 E. JACKSON GOING, Member
 California Regional Water Quality Control Board
 San Francisco Bay Region

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RALPH NOBLES, Planning Commissioner
County of San Mateo

JANICE B. DELFINO
Ohlone Audubon Society

FRANK DELFINO

J. GARY SHANSBY, Member
Trustees of the California State University

RONALD L. ALVARADO, Deputy Secretary
Health and Welfare Agency

JEANNE L. CAIN, Deputy Secretary
Health and Welfare Agency

KAREN KEESLAR
California Nurses Association

MICHAEL C. MAYER, Member
Teachers' Retirement Board

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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Mr. Gould, are you in need in various places around the building today?

MR. GOULD: That would be helpful, yes.

CHAIRMAN LOCKYER: You're next. We've actually got Mr. Going, but I think he'll be patient for a few minutes while we let you come up.

Please let Senators Kopp and Boatwright know if they wish to join us.

Good morning.

MR. GOULD: Good morning. It seems like just hours ago.

CHAIRMAN LOCKYER: I know you've been through a hearing, and it's been reported out once before.

I don't know if there's anything additional that perhaps you would want to comment in any way?

MR. GOULD: No, I think, Senator, we have gone over my experience in meetings that we've had together, as well as before this Committee. I think people know my background. I think that's been well covered.

So, I'd be prepared to answer any questions you might have.

CHAIRMAN LOCKYER: Let me ask if there's anyone in the audience who would wish to make a comment on the question of the Director of Finance? Anyone present?

MR. MCCARTHY: Mr. Chairman, Members of the Senate Rules Committee, my name's Larry McCarthy. I'm representing

1 California Taxpayers Association.

2 CHAIRMAN LOCKYER: You're opposed?

3 MR. MCCARTHY: Actually, we're in support of the
4 confirmation and would urge you to make that recommendation to
5 the Senate.

6 The Cal. Tax staff has had an opportunity to work
7 with Mr. Gould for a number of years at Finance, at the Health
8 and Welfare Agency, and then since his appointment, as Director
9 of Finance.

10 We have -- we think that he is highly qualified for
11 the position of Director of Finance. He has the knowledge of
12 both state and local government finance based on a pretty
13 impressive background and experience. He also brings with him
14 some qualities we think are important right now, some integrity.

15 We have an issue of public finance which is in really
16 crisis proportion. He indicates and has demonstrated a
17 willingness to listen and demonstrated to us a deep commitment
18 to putting California back on a sound financial footing.

19 He's made himself available to organizations who have
20 an interest in public finance. The bill that we just -- you
21 were just discussing, and the need for the public to become more
22 involved in this process, he has spoken to business
23 organizations and others, trying to inform them as to the
24 magnitude of the problem, and what some of the possible
25 solutions might be.

26 We have -- he's not always agreed with our position.
27 He has not always told us what we wanted --

28 CHAIRMAN LOCKYER: When did he disagree? Is there a

1 specific instance?

2 MR. McCARTHY: Yes. We had a real strenuous
3 disagreement about a year ago over the transfer of the property
4 tax from cities and counties to schools. We had a number of
5 meetings, and I would say it was a strenuous disagreement. And
6 he didn't agree, but I think it demonstrated to us that he was
7 willing to listen. He offered some alternatives and we were
8 pleased to see that in the 1994-5 budget, there was an effort to
9 try to restore that property tax to cities and counties. So, we
10 felt that there was -- he was listening at that point.

11 So, and I just conclude by saying that we're
12 obviously -- we face a real serious problem in California. It
13 would be unfortunate, in our view, if we lose the experience,
14 the skill, the knowledge, and the commitment that Mr. Gould
15 represents in this position.

16 Thank you, Mr. Chairman.

17 CHAIRMAN LOCKYER: Thank you.

18 MR. WILHOIT: Mr. Chairman, Members of the Committee,
19 my name is Doug Wilhoit. I'm a Supervisor in San Joaquin County
20 and President of the California State Association of Counties.

21 In the sake of time, I won't repeat much of what was
22 said by the previous speaker, but we agree wholeheartedly.

23 I personally have found it very enjoyable,
24 enlightening, and sometimes, yes, frustrating in working with
25 Russ, but he's a man of his word. He's very knowledgeable; he's
26 very sincere. He has the best interests of California in its
27 entirety in mind.

28 And I think that on behalf of the officers of CSAC,

1 we'd like very much to have this Committee pass on his name for
2 confirmation to the full Senate.

3 Appreciate your time.

4 CHAIRMAN LOCKYER: Thank you very much.

5 Is there anyone else present who's wish to comment?

6 Senator Boatwright, I know you had questions. I
7 appreciate your willingness to participate.

8 SENATOR BOATWRIGHT: I appreciate your concern.

9 I guess since I basically have for years now been
10 Chairperson of the Subcommittee on State Administration that
11 handles the administration, including the Department of Finance,
12 I've been closer to at least the financial aspects of what's
13 going on than most Legislators, and a lot closer this year than
14 I desired to be.

15 But there have been some things that I think should
16 be at least considered by this Rules Committee, and I'll just
17 take a couple of minutes and go over some of these, because I
18 think they're of utmost concern to, certainly, me as a
19 Legislator, and I know to other people also.

20 Senator Alquist, and I, and Senator Hill, and Senator
21 Kopp heard the Department of Finance's budget, and part of that
22 was OIT, the Office of Information Technology. Fairly extensive
23 hearings with respect to the Office of Information Technology,
24 and during those hearings, it became rather obvious that OIT was
25 not doing its job.

26 OIT has oversight, for example, of procurement
27 contracts for computers, computer software, hardware, and the
28 DMV \$44 million screw-up contract. And of course, everyone

1 points the finger at everyone else. That happened before our
2 Subcommittee. DMV blamed OIT; OIT blamed the Department of
3 Motor Vehicles; everyone else blamed someone.

4 But nevertheless, there was a \$44 million fiasco
5 that's going to cost the state \$44 million and probably more
6 than that to get us out of the contract before it's all over.
7 And the Office of Information Technology, in my opinion, not
8 entirely under Mr. Gould, who's only been there about a year,
9 but going back for many, may years, didn't do their job. And
10 they haven't been doing their job with respect to information
11 and technology.

12 And I think unless everyone has their head in the
13 sand, that perhaps we can get agreement from almost everyone in
14 this room that OIT has not been doing their job.

15 In addition to that, in my opinion there was a
16 tremendous conflict of interest by Steve Kolodney, who was the
17 head of OIT until just a matter of weeks ago, when a voluntary,
18 or compulsory, or however you want to put it, reassignment
19 occurred, although he still works for the State of California.
20 But this gentleman who was in charge of OIT until just a few
21 weeks ago worked for Tandem. Actually, he worked with a
22 lobbyist for Tandem that was awarded the DMV contract.

23 He worked there for a while, then he went back to OIT
24 and oversaw, of course, the administration of the Tandem
25 contract.

26 Now, you may not think that's a conflict of interest.
27 It may not be legally, but it sure as hell is morally.

28 I will say that Mr. Gould was not there when he came

1 back, but Mr. Gould was there for a substantial period of time
2 when this was all falling apart at the end.

3 And I just think, and I've discussed some of these
4 matters with Mr. Gould at one time in my office, and it gives me
5 grave concern as the person who oversees the Teale Data Center,
6 who oversees the Department of Motor Vehicles, who oversees the
7 Department of Finance, who oversees the Office of Information
8 Technology, that we have a \$44 million contract that's down the
9 tubes, probably will not be salvaged, and will even come to more
10 cost to the State of California before it's all resolved.
11 That's one thing.

12 Another thing that I want to mention is that we have
13 had, as you know, for a period of time various audits, and I
14 brought three of them with me that have just been issued in the
15 past few months. Here's one from April of 1994 by the State
16 Auditor, "Review of the Implementation, Administration and Plans
17 for the Determination of the California Residential Earthquake
18 Recovery Program," which was a disaster.

19 The next one was April, 1994, the Department of
20 Insurance cannot completely identify its costs for implementing
21 Proposition 103 and performing examinations, another absolute
22 disaster.

23 Does anyone else read these, incidentally? They do.
24 Someone reads them.

25 And a report by the State Auditor in May of 1994,
26 poor management practices at the Department of Insurance,
27 Conservation and Liquidation Division, warranted the
28 Department's continued corrective action. Well, I don't even

1 know what they mean, "continued", because there was no
2 corrective action up until the date of this for years.

3 What it basically boils down to was, if you've read
4 these reports, for example, the Division of Conservation and
5 Liquidation was out of control. And the Subcommittee that I
6 Chair, starting last August, started asking for this report from
7 the State Auditor. We had to jump through hoops to get it,
8 because it was an expensive audit; finally we did get it,
9 basically on our own because I threatened to withhold \$118,000,
10 the cost of the audit, from the Department of Insurance budget
11 and reimburse the State Auditor for the audit. That's basically
12 how we got the audit finally. And it was paid for, agreed to,
13 by the Commissioner of Insurance finally.

14 I'm bringing these out because the Department of
15 Insurance also audits -- I'm sorry. The Department of Finance
16 also audits the Department of Insurance. Approximately \$800,000
17 a year is paid by the Department of Insurance to the Department
18 of Finance for audits. There are full-time audits, continuous
19 audits that are being performed by the Department of Finance in
20 the Department of Insurance.

21 I asked last year that those audits be sent to me. I
22 got some of them. They're useless. They're useless. That's
23 \$800,000 that's absolutely wasted, in my opinion.

24 I invite you to ask for the audits, to look at the
25 audits, to see if I'm joking. Nothing really was picked up
26 comparable to the fraud, actual fraud, mismanagement, in the
27 Conservation and Liquidation Division. Such fraud as, for
28 example, the person, one of the persons one time in charge of

1 one of the insurance companies that was taken over that was
2 responsible for having the sale and the auction went and picked
3 out items herself, took the items home, and then determined she
4 had paid \$200-300 for them. That was the price she put on them.
5 Those kind of things, sad but true, and other things.

6 I invite you to read these reports.

7 But what I'm trying to say is that the Department of
8 Finance, in their audits, should have a long time ago
9 restructured them, or thrown them out and saved that kind of
10 money.

11 And the last thing, and I could go on and on and on,
12 I guess, because I guess when you review someone's budget, you
13 get to be part of the process in that particular department, or
14 agency, or whatever it happens to be.

15 The last thing I want to mention is the Department of
16 Finance's role, which Senator Petris, I think you'd be
17 interested in this, because most people don't even know that the
18 Department of Finance played a role in the California Museum of
19 Science and Industry, but they did, because state law requires
20 that they play a part. And I brought the law with me to read.

21 The Department of Finance signed off on the Museum of
22 Science and Industry project on March 30th of this year. They
23 authorized the Division of the State Architect to proceed with
24 the bids on the project, and other things that they didn't do.

25 For example, the money, as spelled out in this bill
26 -- this is the bill that authorized the retrofitting of the
27 Ahmanson and the Armory in the Museum of Science and Industry.
28 It was AB 1927 by Hughes. It called for seismic rehabilitation

1 and appropriated the sum of \$39,950,000.

2 Instead of a seismic retrofit, of course we know now
3 that the money was funneled into building a new building for a
4 newly created exhibits building, and that the two historic
5 buildings would be torn down, and only the front facade of the
6 Ahmanson building was to be preserved.

7 Now, why am I telling you this? I'm telling you this
8 because I'm going to read you a code section now. Section
9 13332.11 of the Government Code imposes very specific duties on
10 the Department of Finance, very specific specific duties in
11 capital outlay projects. If you'll permit me, I'll read just
12 part of this. This is 13332.11(a):

13 "No funds appropriated for capital
14 outlay may be expended by any state
15 agency ... until the Department of Finance
16 and the State Public Works Board ..."

17 on which Mr. Gould sits as a member of the State Public Works
18 Board,

19 "have approved preliminary plans for the
20 project to be financed from the
21 appropriation for capital outlay"

22 This, I think, is very important. In other words,
23 this gentleman here not only is the Director of the Department
24 of Finance, but sits on the Public Works Board, and they have
25 certain duties with respect to capital outlay right here. As I
26 say, they have to approve the expenditure of these funds.

27 And then under (b), it says:

28 "No substantial change shall be made from

1 the preliminary plans or working drawings
2 as approved by the State Public Works
3 Board ..."

4 of which he's a member,

5 "and the Department of Finance without
6 written approval by the Department of
7 Finance."

8 So, not only did the Public Works Board play a part, but during
9 the past year, the Director of the Department of Finance.

10 And the reason I say that is, if you go to (f) in
11 this code section, (f) is very important; (f) says this:

12 "Prior to State Public Works Board
13 action on any capital outlay
14 appropriation, the Department of Finance
15 shall certify, in writing, to the
16 Chairperson of the Joint Legislative
17 Budget Committee, the chairpersons of the
18 respective fiscal committees, and the
19 legislative members of the board that the
20 requested action is in accordance with the
21 legislatively approved scope and cost.
22 If, pursuant to the other provisions of
23 this section, the Department of Finance
24 approves changes to the approved scope or
25 cost, or both, the department shall report
26 the changes and associated cost
27 implications."

28 And I'm here to tell you that there were no reports

1 to the Joint Legislative Budget Committee of change of scope or
2 money.

3 The bill, so there's no misunderstanding here, the
4 bill very specifically, in Section 4, appropriates for the
5 purpose -- I'm going to read it:

6 "There is hereby appropriated the sum of
7 \$39,950,000 from the Earthquake Safety and
8 Public Buildings Rehabilitation Fund of
9 1990 to the California Museum of Science
10 and Industry. These funds shall be used
11 for the correction of all seismic and
12 other fire and life safety problems
13 identified with the Armory and Ahmanson
14 buildings located at the California Museum
15 of Science and Industry"

16 The Department has upped the cost of the project from
17 the thirty-nine five without notifying the Joint Legislative
18 Budget Committee. As a matter of fact, I'm informed by the
19 Legislative Analyst, who handles this matter, that the
20 Department of Finance approved the proposal to go to bid on
21 March 30th, 1994, when there were no bid documents at CSMI. And
22 as you know, the law requires that the Department of Finance
23 approve the bid proceedings or procedures.

24 And this is what just prompted the Legislative
25 Counsel's opinion; exactly what just prompted it. If you have
26 the opinion, I have it. You can read it. It was in response to
27 a request by Senator Petris. They answered. It was illegal;
28 wasn't done properly, and the scope of change was there. They

1 addressed this issue.

2 And the Department of Finance, and the buck has to
3 stop somewhere -- and I like what Harry Truman said -- it has to
4 stop at the top. The Director was supposed to notify Senator
5 Alquist, as the Chairperson of the Joint Legislative Budget
6 Committee, of the changes in scope and of the additional cost,
7 which is now up to, I believe, around 44-something million
8 dollars.

9 Also, I might point out to you that another section
10 of the law that's been violated, and this is in (f), it says:

11 "The reports shall also include all
12 proposed or potential augmentations in
13 excess of 10 percent of the amount
14 appropriated ..."

15 thirty-nine nine fifty,

16 "appropriated for construction contract
17 costs related to the capital outlay
18 projects."

19 The Public Works Board approved an augmentation of
20 over 10 percent in March of 1994. And again, I don't know if
21 Mr. Gould was present at that meeting, but either he or his
22 designee by law are supposed to be there. He's a member of that
23 board.

24 Anyway, I bring these matters to your attention
25 because they give me grave concern that the Department of
26 Finance is not doing their job.

27 I'm not telling you what to do with respect to this
28 appointment, but I am telling you that the Department of Finance

1 has not been meeting their responsibilities under the law with
2 respect to the Office of Information Technology, with respect,
3 certainly, to the California Museum of Science and Industry, and
4 with respect to the Department of Insurance, those three.

5 Now, I could go on and get into other things that I'm
6 familiar with, because I Chair the Budget Subcommittee that
7 hears this. I'm not going to get bitchy about it. I'm not
8 going to get nit-picking about it.

9 These are three important things that give me pause
10 for concern. So, I bring these to your attention because I
11 think they're very serious.

12 CHAIRMAN LOCKYER: I think maybe it would be
13 constructive to go through each of the three briefly, if
14 Mr. Gould is sufficiently informed to be able to respond.

15 Senator Boatwright, the first is the Office of
16 Information Technology. I saw you making notes.

17 MR. GOULD: Well, let me first mention that we did
18 have an opportunity to discuss this. I met with Senator
19 Boatwright on May 16th, and we talked about the issues related
20 to the Office of Information Technology extensively. And so,
21 I'm familiar with some of his concerns.

22 I think we have to recognize that I don't think
23 anyone is satisfied when you hear of a situation like what is
24 going on in the Department of Motor Vehicles, where there's a
25 potential of a large amount of public funds, and what the net
26 benefit of that is going to be, that we can be satisfied in what
27 we see.

28 I think the Governor also recognizes that, and

1 because of that, established a task force on Government
2 Technology Policy and Procurement to do a complete review, to
3 get outside views from people who have been successful in the
4 private industry, to make a reassessment of how we handle both
5 procurement, contracts, and the use of information technology
6 within California government. I think that's appropriate.

7 I mentioned to Senator Boatwright that that study was
8 going to be completed, and we were looking forward to that to
9 give us some view from an outside perspective of how information
10 technology should both be acquired and used in the future.

11 I also mentioned to Senator Boatwright at the time we
12 met that I think there is some misunderstandings regarding the
13 role of the Office of Information Technology. This is a group
14 of 17 people: 15 professionals, 2 support staff. And I think
15 that in many cases, people view the potential of this group as
16 having total oversight of every data processing project and
17 activity going on in the State of California.

18 I'd suggest to you that that is not credible. You
19 have multi-million, hundreds of million dollar projects going on
20 statewide. There is a reporting requirement both to ourselves,
21 to the Legislative Analyst, to assess what's going on in
22 establishing, monitoring, the development of information
23 technology projects. I think that's appropriate.

24 But there are other players involved. The Department
25 of General Services is responsible for procurement. They're
26 responsible for contracts. Those are not in the purview of the
27 Office of Information Technology.

28 But most importantly, the responsibility for making

1 sure that projects work rests with the administrators of
2 departments. They're the ones who must make information
3 technology part of the daily working responsibilities of their
4 staff in order to be responsive to the people of California.
5 That does not happen easily. We are in an information age that
6 demands you use information technology as a means of achieving
7 your desired goals. We invest in those department directors and
8 their management staff the responsibility to assure that when
9 funds are appropriated by the Legislature to enact automated
10 systems to better serve the clients within those operations,
11 they have a responsibility to fulfill that obligation.

12 We work with them on that, but it is not the sole
13 responsibility of the 17 people within the Department of Office
14 of Information Technology. They work very hard within the
15 resources they have to do the oversight and to provide some
16 input to the departments, but it is not their sole
17 responsibility.

18 I think to suggest that they are the independent
19 party responsible for all data processing within the state
20 overstates what their obligation is and what they are staffed to
21 accomplish.

22 As we discussed with Senator Boatwright, I think it's
23 very clear on some of the suggestions you've made regarding
24 audits, some of the suggestions you've made regarding oversight
25 and monitoring of both data processing or the Department of
26 Insurance, that those are substantially expanded roles from what
27 the Department of Finance is currently staffed to do.

28 And we talked about whether or not in the past the

1 decisions made in terms of reducing staff, because we have
2 reduced with staff with Office of Information Technology by
3 eight positions over the last three years. There've been
4 reductions in the number of audit staff in the Department of
5 Finance. As all departments in state government have had to
6 tighten their belts, so has the Department of Finance. We've
7 had to make some decisions about where to make those reductions.

8 But I think you raised legitimate questions about
9 what the future should hold in terms of oversight and monitoring
10 of those functions, and we'll be glad to work with you, to
11 continue to work with you, in those areas.

12 I think we look forward to the response of the
13 Governor's task force on Government Technology Policy and
14 Procurement to give us an independent perspective that we can,
15 working with you, make an assessment of where we go in the
16 future.

17 CHAIRMAN LOCKYER: In June, I guess it was, the Leg.
18 Analyst issued a report identifying about a dozen computer
19 projects that are in excess of a billion dollars total, all of
20 which have had both time delays and extensions and cost
21 overruns.

22 Is that not DOI that's in the loop with respect to
23 those matters?

24 MR. GOULD: We absolutely are. We get both the
25 original feasibility studies submitted by the department, where
26 they access what they're trying to achieve. From a business
27 planning standpoint, what are you trying to achieve with this
28 information technology? Does it meet a reasonable business

1 task? Is it a good investment of taxpayer dollars to try to
2 make this project work, and what benefit is it going to be to
3 the clients who use this system?

4 We review that to see if, in fact, we believe it is a
5 good investment. From that point, it is the department's
6 responsibility to work with the Department of General Services
7 on either contracts, procurement, or other management efforts to
8 make sure that the project works.

9 We get annual reports on specific projects,
10 especially the large projects through special progress reports
11 that identify what progress those departments are making in any
12 of those projects. So, we work on all of those efforts.

13 CHAIRMAN LOCKYER: So, a dozen of them doesn't alarm
14 you to have that kind of slippage?

15 MR. GOULD: Well, I frankly think we would quarrel
16 with some of the indications made by the Legislative Analyst.
17 Clearly, on a project like the Department of Motor Vehicles,
18 we've got a major concern.

19 In other areas where there are problems, any time
20 you've got something that's unexpected, that exceeds the cost,
21 we're going to want to know why; is there a good, legitimate
22 business reason why that additional cost occurred, and we want
23 to look at that.

24 But I think that you must also recognize there are a
25 number of data processing projects that are an integral part of
26 state government that are working very well, whether it's
27 computer-aided design in the Department of Caltrans, whether
28 it's automated fingerprint services within the Department of

1 Justice, some of the taxpayer information systems at Franchise
2 Tax Board, there are a number of quality systems that have also
3 been implemented during this period of time.

4 So yes, in fact, there are problems. That's why the
5 Governor has indicated the need to get an outside review by that
6 task force, and we are concerned anytime taxpayer dollars are
7 put in a situation where you don't get the full return for the
8 investment made.

9 But I think there are also some very positive things
10 that are going on. I think there's a tendency to focus on the
11 problem areas and not on the things that are working well.

12 CHAIRMAN LOCKYER: In this batch, one is the Social
13 Service Department SAWS, which is one of the bigger ones, 800
14 million, or something.

15 What's the status of that particular program?

16 MR. GOULD: Well, as I recall, the SAWS project has
17 not moved into full operation, that it is moving on an
18 incremental way so that we can make sure that the pieces work.

19 Rather than trying to go statewide with a single
20 system and saying, "We are assured that this is the only way to
21 make this system work," and to have that system go out into
22 statewide application, we think it's premature. It's a very
23 expensive system. It's one that's well needed in order for us
24 to be able to make best use of staff. We're working on the
25 eligibility intake for welfare and for Medi-Cal. We want to
26 make sure that they have computer systems to assist them, but we
27 don't want to rush into something until we know what we've got
28 works.

1 We've been working on two different models to
2 determine which can be most successful, and then working
3 cooperatively with the counties on an implementation schedule,
4 and with Senator Thompson, I might add. He's been very closely
5 involved with this to make sure that our progress is successful
6 as we implement it.

7 So, we are in the staging process. We have not fully
8 implemented it.

9 CHAIRMAN LOCKYER: Any sense of when it's a wrap?

10 MR. GOULD: I don't know. I don't have a final date.
11 I believe it will take a number of years.

12 CHAIRMAN LOCKYER: In discussing these kind of
13 issues, I guess in the report in which Leg. Analyst thought
14 there was a need for greater coordination among all of the
15 systems, as I recall, the Department's response was to label the
16 Analyst's anxieties as Stalinist, which is a kind of interesting
17 pejorative, and perhaps partly true. That is, they were
18 suggesting there ought to be one uniform system so that
19 computers could talk to each other.

20 I guess the Department's, to stay in the genre,
21 approach has been Maoist; that is, a thousand computers shall
22 bloom.

23 Where are we headed with respect to these
24 disagreements?

25 MR. GOULD: Well, first, I don't think that the
26 comment was intended of the Analyst. It says some perspectives
27 indicate.

28 I think it's premature for me to comment. I think

1 that's one of the things we're looking for from this independent
2 review panel. I think we really need to reassess that, and how
3 we integrate and make best use of systems so that we don't try
4 to reinvent the wheel, I think, is a fair question.

5 And I think that there are legitimate issues that
6 have been raised by the Legislative Analyst, but until I get
7 that report, I can't tell you. I don't want to --

8 CHAIRMAN LOCKYER: When are you going to get that, do
9 you think?

10 MR. GOULD: I believe it's mid-August.

11 CHAIRMAN LOCKYER: Senator Boatwright, on this issue?

12 SENATOR BOATWRIGHT: Yes.

13 On the Office of Information Technology, there was a
14 report that came out, I believe it was in March of 1991, by the
15 then acting Director. I think his name was Khunel, K-h-u-n-e-l,
16 which was very critical of the DMV contract, exceedingly
17 critical.

18 Almost immediately after that report was issued, this
19 gentleman was relieved as the acting Director, and by Mr. Gould,
20 he was replaced by the gentleman who had been working for the
21 lobbyist who were lobbying for Tandem that got the contract,
22 Steve Kolodney, almost immediately after that came out.

23 So, whatever you think about what happened or didn't
24 happen, nevertheless, the person who had the very distinct
25 conflict of interest was appointed to this position as Director
26 of OIT by Mr. Gould in March of 1991.

27 MR. GOULD: First, let me respond.

28 I was not Director of Finance. I did not have

1 appointment authority, so that is inaccurate. I did not appoint
2 Steve Kolodney.

3 I was part of an interview team that assessed Steve
4 Kolodney. Tom Hayes made the decision to make that appointment.

5 I did inform Ron Khunel that he was not going to be
6 the person; he was a competitor for that position, and that was
7 my role in that process.

8 SENATOR BOATWRIGHT: The announcement, the
9 announcement, was made by Mr. Gould.

10 MR. GOULD: That's correct.

11 SENATOR BOATWRIGHT: So, I assumed, since he at that
12 time was the Deputy Director of Finance, in charge of Finance at
13 that point in time by Governor Wilson, who made the
14 announcement, certainly played some part in relieving this
15 gentleman. And I understand at the time, and there was a big
16 story, I have it here before, that states that he was relieved
17 primarily because of his very critical analysis of the DMV
18 contract, which continued under OIT unabated for many months
19 after that.

20 MR. GOULD: Well, Senator Boatwright, being a part of
21 the interview team, I have no recollection at all of any
22 discussion of that audit, nor that being any factor in the
23 decision as to who the appropriate candidate might be for that
24 job.

25 We had a number of candidates that we reviewed, both
26 within the state and outside of the state, for that position,
27 and a decision was made to appoint Steve Kolodney to that
28 position.

1 But the audit, frankly, I'm not even familiar with
2 the audit. I can assure you, it had nothing to do with the
3 decision on the appointment.

4 CHAIRMAN LOCKYER: Senator Ayala, did you have a
5 question?

6 SENATOR AYALA: Yes.

7 Mr. Gould, Senator Boatwright recalled a number of
8 problems, allegations. If any of them are correct, we've got
9 some serious problems.

10 But I want to focus on the appropriation of \$39.5
11 million to retrofit, seismic-wise, one of the buildings we have,
12 and it's gone up to \$44 million.

13 Where and who authorized that increase in
14 expenditures?

15 MR. GOULD: Senator, I am not familiar with that
16 issue. I have not -- that's the first time it's been raised to
17 my attention. I am not familiar with it at all. I'll be glad
18 to look into it.

19 SENATOR AYALA: You're not a member of that --

20 MR. GOULD: I have a Deputy Director who sits on the
21 Public Works Board, and so if they made a decision to do that,
22 I'm sure they acted within the law and acted appropriately. As
23 a member, I would have to look back and see how we -- what
24 issues were presented and how we voted on it. I am not familiar
25 with it.

26 SENATOR AYALA: It's difficult for me to understand
27 that it's within the law when the Legislature authorized the
28 39.5 million, and someone who is not a member or part of the

1 Legislature increases it to 44 million. I don't know how that
2 could be under, you know, justifiable under the law. I don't
3 understand it.

4 MR. GOULD: Senator, I wish I'd been aware of it,
5 that this was a concern. I would have done some research on it.

6 My recollection is that under the Public Works Board,
7 there is some authority to make adjustment because, as whether
8 you're building a home, or building a large apartment complex,
9 or office space, you are going to have changes in terms of
10 estimated expenses. And so, there's some flexibility that is
11 provided through the Legislature to the Public Works Board to
12 make adjustments for the cost.

13 SENATOR AYALA: True, but that adjustment has to be
14 authorized by the governing board, whoever that is.

15 MR. GOULD: That's correct.

16 SENATOR AYALA: They just don't automatically do it
17 on their own.

18 MR. GOULD: Absolutely.

19 SENATOR AYALA: I don't understand. I want a full
20 report on that because I think it's interesting.

21 MR. GOULD: I'd be glad to, Senator.

22 CHAIRMAN LOCKYER: On that issue, Senator Boatwright.

23 SENATOR BOATWRIGHT: Well, even if the Public Works
24 board did this, according to law, the law very clearly states,
25 and I read it, that the Director of Finance shall notify, it's
26 mandatory, the Chairman of the Joint Legislative Budget
27 Committee, the chairpersons of the finance committees of each
28 House, of the change in scope and cost. That was not done.

1 That is a direct responsibility under the law and Section
2 13332.11(f) of the Director of the Department of Finance. That
3 was not done.

4 MR. GOULD: Well, Senator, again, this is a new issue
5 to me. We have had an opportunity to meet before. I am always
6 accessible to you if there's an issue that you have regarding
7 what was done. I'll be glad to --

8 SENATOR BOATWRIGHT: Mr. Chairman, that's not my
9 point.

10 I'm not here to tell him everytime that the law is
11 violated that he has to comply with the law.

12 I assume that there are laws that I have to obey, and
13 if I don't, it's my responsibility.

14 I don't think that I have to meet with the Director
15 of Finance to tell him they're violating the law. The law is
16 here. You should know this. This is a very fundamental law.
17 It happens every time that there is a change in scope of plans
18 or a change in cost, you are to notify.

19 And if you haven't been doing that on the other
20 projects, then it's just not this project, it's all projects, if
21 you're not aware of this code section.

22 MR. GOULD: As I indicated to you, Senator, I'll be
23 glad to look into that situation and report back to you as to
24 what occurred and let you know all the details.

25 It's the first time this issue's been raised to my
26 attention. I'll be glad to be responsive.

27 CHAIRMAN LOCKYER: I guess a related issue to ask
28 about those circumstances in which there's a Section 27 or 28

1 letter sent; the Joint Committee turns down the request.

2 Do you recall during your tenure any situations that
3 you went ahead and spent the money, despite that turn down?

4 MR. GOULD: I can't think of one, Senator.

5 CHAIRMAN LOCKYER: Okay.

6 Senator Kopp, Senator Boatwright's been talking about
7 the Office of Information Technology, Department of Insurance,
8 the Museum spending. Those are the three principle things.

9 Did you have anything additional?

10 SENATOR KOPP: Thank you, Mr. Chairman.

11 I just have one inquiry, or line of inquiry, which
12 troubles me because I've known Mr. Gould a fairly long time, at
13 least since I've been a Senator. He is now on the verge of
14 being made permanently the Director of Finance, and I want to
15 evaluate what occurred with respect to a troubling incident in
16 terms of future conduct.

17 Mr. Chairman and Members, on October 14th, 1993, I
18 wrote Mr. Gould, as Director of Finance, with respect to
19 attorneys' fees paid, outside counsel retained by the
20 Commissioner of Insurance with respect to various delinquency
21 proceedings of insurance carriers.

22 What troubles me is this. I sent him a copy of a
23 letter I had sent the Insurance Commissioner of even date which
24 did not seek that specific information from the Insurance
25 Commissioner.

26 I asked Mr. Gould, as Director of Finance, four
27 specific questions. One of those questions was: how much money
28 the firm of Orrick, Herrington, and Sutcliff had been paid by

1 the Department of Insurance and subentities since January 1,
2 1991.

3 The answer I got was circumlocutory. Some would say
4 nonresponsive. On December 6th, or December 9th, I received a
5 letter saying:

6 "Dear Quentin,

7 "Thank you for your letter of

8 October 14th ..."

9 et cetera. Attached to that letter was a copy of another letter
10 which you sent the Commissioner of Insurance:

11 "Since the Commissioner's response to you
12 appears to address the concerns you noted
13 in both letters, it doesn't seem necessary
14 to conduct an independent review at this
15 time."

16 Independent review was one matter. I wanted a cost. I wanted
17 the total amount.

18 And I'll tell you why, because there were newspaper
19 stories that cited figures like \$8 million in two and a half
20 years, \$10 million. I wanted to be exact.

21 I let it go until it became pertinent to a couple of
22 bills that I'm carrying, one dealing with outside counsel. And
23 I had my staff call Mr. Gould's office, and my staff was
24 referred to the Department of Finance audit.

25 These are nonanswers, nonresponsive. It's really
26 irritating.

27 And then, I persisted, and then on Friday or last
28 night, whenever it was, I see a letter dated July 1st to me from

1 Mr. Gould. He still doesn't answer the letter, and he says: I
2 can't get that information together for you by Tuesday, July
3 5th. Which is, I guess, understandable, but where he says he'll
4 have to get it from the Department of Finance.

5 So, my question, Mr. Chairman, to Mr. Gould is: why
6 would you simply not give me the information I asked for on
7 October 14th, 1993?

8 MR. GOULD: Mr. Chairman, let me respond to the
9 Senator.

10 First, let me clarify the dates just so we're talking
11 about the same thing.

12 You did make an inquiry in November. We responded
13 December 6th. We attached two letters from the Department of
14 Insurance, which we thought were responsive.

15 I followed up in a meeting with you, where we sat in
16 your office on May 17th. We talked about that issue. I said,
17 if there is any additional information you need, you have to let
18 me know. He says, well, I thought you weren't addressing the
19 information. I said, well, I thought I did. If there's
20 something you think is missing, please let me know and we'll try
21 to address that.

22 We didn't hear anything back again until, I believe,
23 June 30th. And at that point, my Chief Deputy Director was the
24 one who was in contact with your staff and was trying to work
25 out the information. We indicated that by July 8th, we thought
26 we'd be able to get the information from the Department of
27 Insurance, and so we were following up on that.

28 If we've had a miscommunication, I apologize, but

1 we've tried to be responsive.

2 SENATOR KOPP: But why -- look, this is simple to
3 read: how much has the Orrick firm been paid by the Department
4 of Insurance and subentities thereof since January 1, 1991?
5 Isn't that understandable?

6 MR. GOULD: Yes, it is.

7 SENATOR KOPP: Then why supply me with copies of
8 documents which don't answer the question as though those were
9 providing the information? It should a calculation. I wanted a
10 dollar amount. I still want it.

11 MR. GOULD: Well, Senator, that wasn't clear when we
12 met in May. And as I indicated, we are researching that
13 information. We'll provide it to you.

14 SENATOR KOPP: Well, what'll happen in the future,
15 Mr. Gould, if I sent you another letter like this, asking for a
16 dollar figure, because your Department has the responsibility of
17 identifying such amounts, what will happen? Will I get some
18 kind of a reference to another departmental head, or some
19 document which doesn't have the calculation?

20 MR. GOULD: No, Senator. I think the Department of
21 Finance has a history of trying to be responsive. It tries to
22 be accurate, and we will continue to do so.

23 If there's ever a question that you have, I think the
24 unfortunate part is that we had a lot of time elapse, both from
25 the December letter until when we met, May 16th, until we got
26 clarification on exactly what we were trying to achieve in late
27 June. I think that's unfortunate. It obviously didn't meet
28 your needs.

1 But I think if you look at the Department of Finance,
2 the professional staff there, I think they take a great deal of
3 pride in providing honest and complete information to the
4 Legislature.

5 SENATOR KOPP: Well, here's what I'm looking at.

6 I'm looking at your letter. You signed this letter
7 of December 6th, 1993.

8 MR. GOULD: That's correct.

9 SENATOR KOPP: It's nonresponsive. It is
10 nonresponsive. Why would you sent such a letter to me?

11 MR. GOULD: Senator, obviously the two attachments
12 which went with it, which were information which we obtained
13 from the Department of Insurance, we thought was responsive.

14 And when we followed up with you in May, there was no
15 indication of any specific follow-up that you requested.

16 SENATOR KOPP: Well, I have the Commissioner's letter
17 of November 5, 1993. All he's doing, he's not answering
18 questions because I didn't put to him those questions I put to
19 you. I put to him a different question than I put to you.

20 All he's doing is giving his rationale for hiring
21 outside counsel, all the complexity issues, and all the rest of
22 the rhetoric which I've heard time and again.

23 I simply don't understand it, Mr. Gould. I simply
24 don't understand it, unless somebody in your office simply
25 thought this was the way to address it and put the letter before
26 you. You struck out the salutation, "Dear Senator Kopp," and
27 wrote in "Quentin", and then you signed it.

28 I just don't understand it, and it bothers me. It

1 bothers me.

2 But I thank you, Mr. Chairman and Members, for my
3 time here and for indulging.

4 CHAIRMAN LOCKYER: Thank you, Senator Kopp.

5 Senator Boatwright, did you want to jump back to the
6 Department of Insurance audit issue, or anything else? We
7 haven't discussed that directly yet.

8 SENATOR BOATWRIGHT: I think I've discussed it
9 sufficiently.

10 There's so many things that, in these hard fiscal
11 times, need really addressing, and they aren't being addressed;
12 truly are not being addressed.

13 For example, the Auditor has issued a report on sole-
14 source contracting. It's being exacerbated on a yearly basis, a
15 yearly basis. The law basically is being violated because
16 there's only basically one deviation that's allowed, and that's
17 for emergency work.

18 It goes to the Department of General Services. They
19 just routinely sign off.

20 I think as a matter of just good, prudent fiscal
21 policy, the Department of Finance, as the fiscal arm of the
22 Executive Branch, being under the Governor -- General Services
23 is under the Governor -- ought to do something to get a handle
24 on sole-source contracting, which could be costing the state,
25 according to the State Auditor, substantial monies. Plus, it's
26 not complying with the law, and that's why I read this.

27 I guess maybe one of the bad things coming here as a
28 lawyer is that you read the law. Sole-source contracting's

1 being violated. This law I read is being violated.

2 I would like to see whoever is the Director of
3 Finance, whomsoever that person be, enforce the law, comply with
4 the law. In these tough times, make sure the law is being
5 complied with, and it isn't on sole-source contracting, and it
6 isn't on other things, such as I read here.

7 The Joint Legislative Budget Committee, had they
8 known this back when the State Public Works Board -- and I've
9 got the dates broken out here. I can tell you when it appeared
10 exactly before them. In December, 1993, the State Public Works
11 Board approved the plans for the demolition, which was something
12 beyond the scope. There should have been a notification as of
13 that time. Then in March of 1994, the State Public Works Board
14 approved the preliminary plans for new construction with the
15 additional \$4.2 million. That triggered, again, notification,
16 which didn't occur. And then on March 30th, the Department of
17 Finance authorizing the Division of the State Architect to
18 proceed to bid. There should have been a notification.

19 I guess all I'm saying is, we ought to comply with
20 the law.

21 That's all I have.

22 CHAIRMAN LOCKYER: Thank you, Senator Boatwright.

23 Was there anyone else in the audience that hadn't had
24 a chance to comment that wished to, either for or against the
25 nomination?

26 Senator Boatwright, I appreciate your diligence in
27 examining these matters with specificity that's rare in the
28 Legislature and to be commended.

1 Mr. Gould, there does appear to be some --

2 SENATOR BOATWRIGHT: I'm not taking a position.

3 CHAIRMAN LOCKYER: I understand.

4 SENATOR BOATWRIGHT: I simply want to bring this to
5 the attention of this body and to Mr. Gould.

6 And if he does become the Director, I would hope that
7 -- I mean, I don't want to run down to his office all the time
8 and say this needs doing.

9 Maybe you want to appoint someone to advise you as to
10 the law, if you don't have a legal advisor, so you comply with
11 the law, so the Legislature's kept informed, so the law's
12 complied with.

13 CHAIRMAN LOCKYER: It does sound like, from the
14 various comments that have been made, that there could be a
15 better job of not just complying with the formality of the law,
16 but in working as partners in a fuller sense.

17 Senator Petris, I know there's a large segment in our
18 packet relating to Ward Valley. The groups that had concerns
19 about that in the past aren't present, partly because it's sort
20 of water under the bridge, other than if there's issues that
21 relate to credibility or matters that would affect current --

22 SENATOR PETRIS: Well, I was hoping to stay out of
23 Ward Valley. We had a lot of stuff on that, and we went round
24 and round, and there were court actions and so forth.

25 But this massive material just came in. I haven't
26 had a chance to read it. There are somethings in here relating
27 to events after the fact which I think we ought to pursue, but
28 I'm not prepared right now to do it.

1 CHAIRMAN LOCKYER: My suggestion on that, Senator,
2 would be, since we're going to be running into the afternoon, is
3 perhaps during the lunch hour or something, you or staff could
4 review, or any Member that's interested.

5 SENATOR PETRIS: Yes, I would appreciate that.

6 CHAIRMAN LOCKYER: We'll hold the vote until a little
7 later in the afternoon for that.

8 SENATOR PETRIS: I might tell Mr. Gould so he can get
9 the information, one of them has to do with the mechanism for
10 acquiring the land relating to Ward Valley.

11 According to this information here, the arrangements
12 were made apparently as an end-run to evade certain other
13 requirements to have U.S. Ecology buy the land on behalf of the
14 state, and then have them reimbursed through the fee schedules
15 that would be established, apparently, by the Department
16 thereafter that would take into account the amount of money they
17 expended so they would be reimbursed over a period of time.

18 So, the question there is: why do we have a private
19 company that is trying to make a contract with the state step in
20 as the agent of the state? I don't know; maybe that's been done
21 before. It just seems to me to be a little unusual. I've never
22 heard of that before.

23 That's one of the things. I haven't read completely,
24 but just to alert you as to the particular subject, you might
25 want to look into that.

26 MR. GOULD: All right.

27 SENATOR PETRIS: Kind of a side-stepping thing, it
28 looks like to me.

1 MR. GOULD: Okay, I'll be glad to look into that.

2 SENATOR PETRIS: I would like to ask you some
3 questions on that after I've read the material. That's one of
4 the areas.

5 I don't know what else. There might be one or two
6 others.

7 CHAIRMAN LOCKYER: Maybe, if you wouldn't mind, we'll
8 sort of break on this matter, resume a little later in the
9 afternoon?

10 MR. GOULD: That's fine.

11 CHAIRMAN LOCKYER: Would that be agreeable?

12 MR. GOULD: That's fine.

13 CHAIRMAN LOCKYER: And then Senator, or anyone
14 interested, will have a chance to review those documents, and
15 we'll just get back to it.

16 SENATOR PETRIS: What time would you suggest?

17 The reason I ask is, I have to leave at 4:30 to go
18 back to the district.

19 CHAIRMAN LOCKYER: How about 1:30? We'll come back
20 here and run back and forth between committees.

21 SENATOR PETRIS: Yes, we'll have to. Judic. will go
22 on for a long time.

23 CHAIRMAN LOCKYER: Well, we'll continue to hear some
24 other matters right now, but when we do take a lunch break,
25 maybe we'll have additional time there.

26 SENATOR PETRIS: The other thing is, if I had
27 received this information sooner, my normal approach would have
28 been to call you immediately and have a private conversation, as

1 we have in the past, and I'm sure some of this could have been
2 cleared up. Now it's going to take a little more time because
3 of the late timing.

4 There are at least one or two areas that I think I
5 need to go into to clarify.

6 MR. GOULD: That's fine.

7 SENATOR PETRIS: Thank you.

8 CHAIRMAN LOCKYER: Thank you, Mr. Gould. We'll
9 reconvene on this later.

10 Let's do the Hastings College appointments.
11 Mr. Freeland, you're present I know, and I guess maybe we'll
12 take one at a time, I suppose.

13 Hi. Did you want to tell us anything about why you'd
14 like to keep doing this?

15 MR. FREELAND: Well, that's a good question.

16 It's been over 40 years that I have flown from San
17 Diego to Hastings, to San Francisco, and returned. I've
18 probably made over 200 round trip flights, and I've probably
19 spent in excess of 200 nights in hotels in San Francisco to
20 attend Hastings responsibilities. And I've done that --

21 CHAIRMAN LOCKYER: For 40 years?

22 MR. FREELAND: Yes. Yes, I graduated in '51, and
23 it's now '94. I'm still doing it, and I started right after I
24 graduated.

25 CHAIRMAN LOCKYER: Why don't you just move your
26 practice to the San Francisco area?

27 MR. FREELAND: Well, that's a good question.

28 And I am looking forward to the privilege and

1 opportunity of continuing to serve Hastings in this new
2 capacity, and I feel very strongly that there are things that
3 the Board of Directors must turn their attention to. One in
4 particular is the question of student fees.

5 We are -- Hastings Law School is governed by a law
6 that provides that the Board of Regents set student fees. That
7 was not always the case. It was only a few years ago that the
8 Legislature adopted that law. And there's a sunset provision in
9 the law that will give the responsibility back to the Hastings
10 Board in 1996.

11 And if I'm on that Board at that time, I'll be one
12 looking for the return of the responsibility for students fees
13 to where, in my opinion, they belong, and that's the Board of
14 Directors of Hastings.

15 Hastings is unique. Every law school is unique, but
16 Hastings is especially unique with its special personality and
17 self-imposed responsibilities. Hastings has its own fundraising
18 capacities that are not necessarily available to all other
19 schools. So there's good reason to believe that Hastings could
20 certainly make as a goal a lower fee schedule for its students
21 as compared to the other University of California law schools.
22 But at the present time, it can't do that because it's powerless
23 to set the fees independently.

24 I'm prepared, I guess, to answer questions. I would
25 look forward to your confirmation so that I can continue to
26 serve a school I love very dearly.

27 CHAIRMAN LOCKYER: Mr. Freeland, you're to be
28 complimented for your commitment to the school.

1 I guess it's not a lot either of us can do about
2 this, but when you look at the Board of Directors, you can't
3 help but to notice that it's entirely Anglo. I believe there
4 are two women, and that's it.

5 It looks like someone's not doing an adequate job of
6 concerning themselves with the diversity of the state and trying
7 to have it reflected in the governing board.

8 That probably isn't your job, other than to maybe
9 influence those that would be making those decisions, but if you
10 have any thoughts about the matter, or any specific policy
11 decisions that you had to make that involve ethic and gender
12 diversity in programs, or hiring, or whatever, that may be
13 relevant to the Board's composition, I'd be interested in
14 hearing your general thoughts.

15 MR. FREELAND: Fine, Senator.

16 I feel very strongly that any board should consist of
17 a fair sampling of its constituents. I think that not only the
18 board, but the administration, the faculty, and the student body
19 should all fairly reflect the composition of the state. I think
20 that, for credibility purposes, leadership must reflect the
21 make-up, the general make-up, of those who are to follow, are
22 expected to follow.

23 And in part -- and I also consider it the
24 responsibility of Board members to urge the Governor, to urge
25 this Committee, and to urge the Board itself to seek diversity.

26 And I concur that, as I see the current composition
27 of the Board, it does not completely reflect the very diverse
28 student body that the school has. The school has reached out

1 for diversity at the student level, but it has not -- but it's
2 not up -- it's not within the power of the Board now to achieve
3 diversity directly.

4 But I have spoken with the Governor, as an example.
5 I have personally recommended Elizabeth Bradley, who's here in
6 the audience, and she is an Hispanic, female Hispanic, but not
7 because she's a female Hispanic exclusively, but because she's
8 an extremely intelligent woman, a very capable lawyer, a fine
9 graduate of Hastings, is serving as President of the Alumni
10 Association, is on the Board of Directors of the 1066
11 Foundation. So, I've made my effort. I intend to continue to
12 make that effort.

13 I fully concur that the system at the moment is not
14 functioning as I would like to see it function.

15 CHAIRMAN LOCKYER: Sir, I compliment you for your
16 efforts and encourage you in your future endeavors in that
17 respect.

18 Are there questions from Members? Yes, Senator
19 Ayala.

20 SENATOR AYALA: Mr. Freeland, since most of the
21 current Board members are graduates of Hastings --

22 MR. FREELAND: Yes.

23 SENATOR AYALA: -- isn't that like putting Colonel
24 Sanders in charge of the chicken coop? I mean, don't you need
25 some other administrative views into the process, other than
26 Hastings graduates?

27 It's not your problem, however. I understand that.

28 But wouldn't you suggest that, perhaps, a graduate of

1 other law schools could probably add some addition to what you
2 normally do all the time, since you're all familiar with
3 Hastings, and you go along with that.

4 MR. FREELAND: Well, in line with the concept of
5 diversity, the diversity of work experience could be invaluable,
6 could be very helpful.

7 So, I wouldn't even restrict or confine it
8 necessarily to just lawyers from other law schools, but persons
9 of other professions and persuasions might be also very
10 invaluable.

11 SENATOR AYALA: Thank you.

12 MR. FREELAND: I do not believe that harm is done. I
13 do consider Hastings to be a family. So, to have family members
14 come back to rule the family, to direct the family, is good.
15 But outside thoughts are very beneficial as well.

16 SENATOR AYALA: You need some input from other views,
17 other than just members of the family.

18 MR. FREELAND: Yes, sir.

19 SENATOR AYALA: Thank you.

20 MR. FREELAND: Especially when it's a public
21 institution serving the entire public.

22 CHAIRMAN LOCKYER: The Governor's budget earlier in
23 the year suggested privatizing one of the state law schools. It
24 wasn't indicated which one.

25 Do you have any thoughts about whether that would be
26 an appropriate direction to take Hastings or not?

27 MR. FREELAND: Well, I would say that because it has
28 always been more or less independent of the balance of the

1 University of California system, that were there to be a
2 privatization among the four schools, Hastings would be the most
3 logical candidate.

4 But I have not addressed in my thinking the specifics
5 of such a project, but if it was to be given serious
6 consideration, I would expect Hastings to be at the forefront of
7 the analysis.

8 CHAIRMAN LOCKYER: Do you have any personal leaning
9 with respect to the matter?

10 MR. FREELAND: Well, I have no personal desire to
11 have Hastings break from the public sector. If that became of
12 benefit to the state as a whole and to the student body, then it
13 should be given serious consideration.

14 But I don't feel some sort of chauvinistic or
15 provincial -- I don't have a feeling that Hastings is destined
16 to become a part of the private sector or should, but I say that
17 if that, in the overall scheme of good government and good
18 education, that were to be considered, I think Hastings should
19 be asked to consider it, and should consider it.

20 CHAIRMAN LOCKYER: Mr. Freeland is obviously a good
21 lawyer.

22 Any questions from other Members?

23 I know there are people here who support your
24 candidacy.

25 MR. FREELAND: Yes. Could I speak of a few?

26 CHAIRMAN LOCKYER: You might just maybe acknowledge
27 them --

28 MR. FREELAND: Yes.

1 CHAIRMAN LOCKYER: -- but I don't know that they'll
2 need to testify.

3 MR. FREELAND: All right.

4 First and foremost by any standard is our current
5 Dean, Mary Kay Cane, the first woman Dean in the 116 year
6 history of the law school.

7 And Angel Kachadur, our fine General Counsel, is here
8 in support of, I believe, the nominations.

9 I've already bespoken to Elizabeth Bradley, and Jack
10 Smith, a fine lawyer from Hayward who has also served all the
11 boards that I have and served in the same presidential capacity,
12 and been Alumnus of the Year, as have I.

13 And also there was John Knox, Jack Knox was here, a
14 fine former Legislator, and is the Vice President of our Board
15 and will be President next year.

16 SENATOR AYALA: You did real well until you mentioned
17 Knox.

18 [Laughter.]

19 CHAIRMAN LOCKYER: Thank you very much for your
20 comments.

21 What's the pleasure of the Committee?

22 SENATOR AYALA: I'll move the confirmation.

23 CHAIRMAN LOCKYER: We have a motion by Senator Ayala.
24 Call the roll.

25 SECRETARY WEBB: Senator Ayala.

26 SENATOR AYALA: Aye.

27 SECRETARY WEBB: Ayala Aye. Senator Beverly.

28 SENATOR BEVERLY: Aye.

1 SECRETARY WEBB: Beverly Aye. Senator Petris.

2 SENATOR PETRIS: Aye.

3 SECRETARY WEBB: Petris Aye. Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Craven Aye. Senator Lockyer.

6 CHAIRMAN LOCKYER: Aye.

7 SECRETARY WEBB: Five to zero.

8 CHAIRMAN LOCKYER: Thank you, sir.

9 MR. FREELAND: Well, thank you.

10 CHAIRMAN LOCKYER: Continue your fine efforts.

11 Ms. Corcoran, good morning. Was there anything you
12 wanted to tell us generally about your service on the Board?

13 MS. CORCORAN: Thank you for the opportunity to speak
14 a little bit about my background.

15 I am grateful to tell you why I think I may bring a
16 different perspective to the Board of Hastings than some other
17 people who might have been nominated.

18 My first career before I went to law school, I was a
19 teacher. I was serving in higher education for several years.
20 I taught at the University of Iowa, training student teachers,
21 and then I went to Foothill College, where I was teaching
22 literature at writing before I went to law school.

23 Subsequently, I was given the opportunity and the
24 honor of serving as General Counsel at the U.S. Department of
25 Education because of the combination of my perspective on the
26 law and education, so I was very grateful to be nominated and
27 hope that I --

28 CHAIRMAN LOCKYER: Who was Secretary at that time?

1 MS. CORCORAN: Secretary Bell, Terrell Bell, from the
2 University of Utah, and he had been Commissioner of Education
3 for a year, many years before that. He was really committed and
4 continues to be committed to education and has -- serves as a
5 Professor Emeritus now at the University of Utah.

6 CHAIRMAN LOCKYER: What were the most significant
7 controversies during that two and a half year period, '84-86?

8 MS. CORCORAN: It was fairly quiet times. Of course,
9 the Department of Education always has high on the agenda the
10 civil rights issues. We didn't have any lawsuits that were
11 particularly problematic at that time.

12 We did have a lawsuit that -- where we were pursuing
13 in California related to the University in Sacramento, actually.
14 That was Native American issues about the land should have been
15 granted to Native Americans. I believe that was resolved.

16 You know, this has been ten years ago, but I remember
17 coming up to Sacramento and the U.S. Attorney's Office, trying
18 to deal with that on behalf of the Department of Education
19 because the Secretary was personally named.

20 CHAIRMAN LOCKYER: Were there affirmative action
21 fights during that --

22 MS. CORCORAN: We didn't have any really particular
23 affirmative actions fights. There was just the general
24 compliance issues that came up, Cal Grant issues, issues
25 relating to, you know, the disadvantaged children in Chapter I
26 grant disputes, but there was nothing particularly
27 controversial, except trying to deal within a very small budget,
28 and the problems that we continue to face today in California in

1 higher education.

2 CHAIRMAN LOCKYER: You've been in the last several
3 years at PMS.

4 MS. CORCORAN: Yes.

5 CHAIRMAN LOCKYER: What are your duties there?

6 MS. CORCORAN: Did you ask me, what is my practice?

7 CHAIRMAN LOCKYER: Yes.

8 MS. CORCORAN: I'm a health care lawyer primarily,
9 but I have education clients, two education clients, that I work
10 with in the educational research and development, but I was --
11 I've specialized in health law for most of my professional
12 career. I'm dealing with that difficult issue right now.

13 CHAIRMAN LOCKYER: Questions?

14 Did you have anything else you wanted to add? I'm
15 sorry, I cut you off.

16 MS. CORCORAN: No, I just wanted to state my
17 background.

18 CHAIRMAN LOCKYER: Do you have an opinion you'd
19 express with respect to privatization at Hastings?

20 MS. CORCORAN: No, I haven't had a chance to examine
21 that issue.

22 I think that Hastings has been exemplary in its
23 support of the multicultural diversity that our public
24 university systems must serve, and an ability to do it
25 efficiently and economically. And I'm not sure that that would
26 continue if that particular public university were privatized.
27 I think that would be a very important thing to look at.

28 CHAIRMAN LOCKYER: I would concur.

1 Other thoughts, comments, questions?

2 What is the pleasure of the Committee?

3 SENATOR PETRIS: Move.

4 CHAIRMAN LOCKYER: We have a motion by Senator
5 Petris. Call the roll, please.

6 SECRETARY WEBB: Senator Ayala.

7 SENATOR AYALA: Aye.

8 SECRETARY WEBB: Ayala Aye. Senator Beverly.
9 Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Petris Aye. Senator Craven.

12 SENATOR CRAVEN: Aye.

13 SECRETARY WEBB: Craven Aye. Senator Lockyer.

14 CHAIRMAN LOCKYER: Aye.

15 SECRETARY WEBB: Four to zero.

16 CHAIRMAN LOCKYER: Thank you very much. Keep up the
17 good work.

18 Mr. Going is number two on the agenda.

19 We've had some time to interview with you. Do you
20 have any after thoughts, "Gee, I wish I'd mentioned," something
21 that you hadn't?

22 MR. GOING: Mr. Chair and Members, there were a
23 couple of questions that I believe Ms. Michel has received the
24 information from the Regional Board regarding my voting record.

25 I've also examined the four clients, that was the
26 other question, the four clients that I serve in a very small
27 way. None of them hold any NPDES permits, nor do they have any
28 certification permits issued by any Regional Board.

1 CHAIRMAN LOCKYER: We seem to have learned that the
2 federal law regarding conflict of interest for these
3 appointments seems to be a barrier in Mr. Burke's case, and
4 that's being reviewed in the Governor's Office, but that that
5 doesn't present a legal barrier to you. That seems to be agreed
6 to by all who have examined the questions posed.

7 I do know there are a couple of other who weren't
8 able to testify last time that were hoping to say something
9 briefly today. Maybe I could ask for that, and you might
10 respond, then, Mr. Going, to any new concerns that we'll hear.

11 MR. GOING: Certainly, I'd be happy.

12 CHAIRMAN LOCKYER: Anyone that wishes to comment?
13 Yes, sir, please.

14 MR. NOBLES: Mr. Chairman and Members of the
15 Committee, my name is Ralph Nobles, and I live in Redwood City.
16 And I am a member of the San Mateo County Planning Commission.

17 And I'm here today to ask that this Committee not
18 recommend the confirmation of Mr. Going and Mr. Burke to the
19 Regional Water Quality Control Board.

20 There is a bill of particulars which has been
21 submitted and it's well documented. I don't intend to go over
22 that again, but there are two matters which I found were
23 particularly objectionable and offensive to me, and I just
24 wanted to talk about them briefly.

25 I attended the meeting of the Regional Water Quality
26 Control Board in which the Board voted to grant water quality
27 certification for the Mayhews Landing project. And at that
28 meeting, Mr. Going made comments which I felt were gratuitously

1 discourteous to the members of the public.

2 I have been a Planning Commissioner now since 1984,
3 and I have participated in, either from the podium or in the
4 audience, literally hundreds of public meetings. And I don't
5 think in all those meetings have I before heard such gratuitous
6 discourtesy from an official.

7 Second item which I take very strong exception to is
8 Mr. Going's and Mr. Burke's vote to certify the Mayhews project
9 without benefit of an environmental impact report, even though
10 the evidence is clear that such a report would be necessary.
11 And their vote was based on the fact that this was adequately
12 covered in the City of Network's general plan. In that general
13 plan, there were three sentences covering the Mayhews Landing
14 project.

15 And I think anyone who would make such a vote shows a
16 disregard for the environmental laws of this state, and I think
17 -- I'm not sure, but I think that the meeting in which Mr. Going
18 made the motion to certify that was fairly early in his tenure
19 on the commission. It may have actually been his very first
20 meeting.

21 And I sincerely hope that this Committee will not
22 recommend confirmation of these two parties.

23 Thank you.

24 CHAIRMAN LOCKYER: Thank you, sir.

25 Additional comments?

26 MS. DELFINO: Thank you, Senator Lockyer and Members
27 of the Senate Rules Committee. I'm Janice Delfino of Ohlone,
28 that's O-h-l-o-n-e, Audubon Society.

1 And my first question is to Mr. Going, when did you
2 first serve on the Regional Water Quality Control Board?

3 CHAIRMAN LOCKYER: He was appointed 8/25/93.

4 MS. DELFINO: So the September 15, 1993 meeting was
5 the second, his second of serving on the Board.

6 I just wonder if Mr. Going realized what the primary
7 responsibility of the Regional Board is, and if he didn't, then
8 I'll say that it is to protect the quality of the surface,
9 ground water, and within the region of the -- within this
10 particular regional region, rather, I should say.

11 And the Board's responsibilities and procedures are
12 outlined in the Porter-Cologne Water Quality Control Act that
13 deals with water resources and water quality of the state.

14 And not only that, but the Regional Water Quality
15 Control Board is charged with protecting water quality under the
16 Clean Water Act.

17 And from the transcript, the September 15th 1993
18 transcript, Mr. Going's statement was that this project -- I'm
19 talking about the Mayhews Landing project -- borders on an
20 economic situation. And he claimed the project was good for
21 jobs, homes, and work conditions, but not once did he mention
22 water quality. The water quality issue is what the Water
23 Quality Board is all about.

24 And even though the staff of the Water Board denied
25 -- recommended denial of water quality certification, it was
26 Mr. Going that recommended or made the first motion for water
27 quality certification. So, I don't think that Mr. Going really
28 understands what the Porter-Cologne -- the Act is all about, or

1 what his responsibility is.

2 And he was also appointed under the category water
3 quality, but it didn't come through in this meeting.

4 CHAIRMAN LOCKYER: Thank you, Ms. Delfino.

5 Anyone else that wishes to comment?

6 Did you want to respond, Mr. Going?

7 MR. GOING: Sir, I don't know if you want me to
8 repeat.

9 CHAIRMAN LOCKYER: We did discuss-

10 MR. GOING: We did discuss this, and I did respond to
11 the same things that have been said.

12 I don't believe I made the initial motion, but was --
13 besides the meeting that I attended upon being appointed,
14 beginning in August of last year, I did attend six meetings,
15 observing meetings, prior to that time, from February through
16 August.

17 CHAIRMAN LOCKYER: I did some independent research
18 since our last discussion of this, since Mayhews Landing is in
19 my district.

20 Mostly what I learned is, it is probably among the
21 best cases for a case study of what can go wrong with
22 everything. Every level of government, this particular permit
23 dispute, I think, has been active for not just the Water Board,
24 but the whole project for something like 16 or 17 years.

25 The Army Corps of Engineers, who typically have a
26 2-2½ year tenure of the colonels that rotate in and out that
27 have to review these, I think there's been five colonels or six
28 during the course of the discussion of just this issue.

1 I think I'm going to have a public forum just to
2 bring all the affected and interested parties together sometime
3 in the fall. It's unrelated to the issue of your confirmation,
4 but just as a case study of how environmental laws work, or
5 endangered species issues, or departmental actions or inaction,
6 I think we might all benefit from microscopic examination of the
7 basket of issues presented by Mayhews.

8 MR. GOING: Senator, if I could comment, that was one
9 of the reasons the proposal did have my support. It was the
10 only option and the only time we would have to look at this.
11 Also, the Corps had, you know, pretty much agreed and supported
12 this because of the cleaning of the wetlands, which I am very
13 supportive of wetlands, and multiple replacement, which this was
14 going to do considerably. It would have replaced three times
15 the wetlands that would have been accommodated in the
16 development. It would have also put an open channel that would
17 have kept that area clean, which is now polluted.

18 But I felt that it was very important to our clean
19 water.

20 CHAIRMAN LOCKYER: Other questions from Members at
21 all?

22 Yes, Mr. Delfino.

23 MR. DELFINO: Good afternoon, Senator Lockyer and
24 other Members. My name is Frank Delfino.

25 I wasn't going to speak, but when I hear Mr. Going
26 talking about all these great things, I should make the comment
27 that the Corps of Engineers has not looked with favor upon what
28 the Water Board did.

1 The Corps has some cease and desist on it. There's
2 been no investigation for toxics, and the Water Board should be
3 concerned about toxics on the site.

4 So, the whole idea of recommending certification and
5 approval and so on is completely out of the world, out of this
6 world. That is not the case.

7 There was a, you might say, a preordained or
8 preconceived idea that this was going to be approved in spite of
9 everything, not because of anything.

10 Anyway, that's all I have to say.

11 CHAIRMAN LOCKYER: Thank you, sir.

12 What's the pleasure of the Rules Committee?

13 SENATOR CRAVEN: Move.

14 CHAIRMAN LOCKYER: We have a motion by Senator Craven
15 to recommend confirmation to the Floor.

16 Call the roll, please.

17 SECRETARY WEBB: Senator Ayala.

18 SENATOR AYALA: Aye.

19 SECRETARY WEBB: Ayala Aye. Senator Beverly.
20 Senator Petris.

21 SENATOR PETRIS: No.

22 SECRETARY WEBB: Petris No. Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Craven Aye. Senator Lockyer.

25 CHAIRMAN LOCKYER: Let's leave it on call.

26 SECRETARY WEBB: Two to one.

27 CHAIRMAN LOCKYER: I think there'll be an absent
28 Member returning.

1 MR. GOING: Thank you, Senator and Members. I
2 appreciate the time, and my ability to come back and speak to
3 you.

4 CHAIRMAN LOCKYER: Thank you very much.

5 We had a previous appointee scheduled for vote only.
6 This is J. Gary Shansby, member of the State University Board of
7 Trustees.

8 Senator Petris, did you want to add any
9 clarification?

10 SENATOR PETRIS: Yes, Mr. Chairman.

11 I had some reservations at the last hearing, and I
12 spoke with the nominee after the hearing and received a copy of
13 a letter that he had addressed to you, in which he refers to our
14 discussion, to my discussion, with him.

15 I was concerned about the degree of independence that
16 he would be exercising as a Trustee, since we've focused on that
17 in the past. And in the letter, he sets forth some
18 controversies in which he was engaged, which showed what I was
19 looking for, frankly. It showed a very strong sense of
20 independence, one of them in his very first year on the Board.
21 A controversy over the Chancellor at that time erupted. That
22 was Chancellor Reynolds, who left the system afterward.

23 He made strong public and strenuous public objections
24 to the actions that she had made over a period of time, and he
25 had chaired the special personnel committee of the Board that
26 investigated the circumstances surrounding the events and led to
27 the subsequent resignation of the Chancellor and then the
28 appointment of an interim Chancellor.

1 On paper, he's supported the revocation of the
2 executive pay raises that had been approved in private and
3 insisted on public hearings with full knowledge of the public at
4 the time, and cites one or two other things, which I thought
5 showed a pretty clear record which we didn't have before
6 regarding his willingness to act independently, rather than just
7 submit to whatever the administration recommends or does.

8 So, I'm prepared to support his confirmation at this
9 time because of those reasons, Mr. Chairman.

10 CHAIRMAN LOCKYER: I find them persuasive as well,
11 Senator.

12 We'll add the letter from the gentleman in the
13 record.

14 SENATOR PETRIS: That's fine.

15 CHAIRMAN LOCKYER: Anyone present who'd wish to add
16 any additional comments on this nominee?

17 A motion would be in order.

18 SENATOR CRAVEN: Move.

19 CHAIRMAN LOCKYER: By Senator Craven.

20 May we substitute the roll and record the four of us
21 present?

22 Call the roll.

23 SECRETARY WEBB: Senator Ayala.

24 SENATOR AYALA: Aye.

25 SECRETARY WEBB: Ayala Aye. Senator Beverly.
26 Senator Petris.

27 SENATOR PETRIS: Aye.

28 SECRETARY WEBB: Petris Aye. Senator Craven.

1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Craven Aye. Senator Lockyer.

3 CHAIRMAN LOCKYER: Aye.

4 SECRETARY WEBB: Four to zero.

5 CHAIRMAN LOCKYER: What I'm hoping, Members, is, if
6 we stay at it here for just a few more minutes, we could finish
7 our confirmations, and then people don't have to stay while we
8 take a break and come back for, perhaps, another 20 minutes or
9 so.

10 Mr. Alvarado, good afternoon, sir.

11 MR. ALVARADO: Good afternoon, Senator, and the
12 Committee.

13 CHAIRMAN LOCKYER: Would you want to tell us anything
14 about how this job is going? What's the hardest part of it?

15 MR. ALVARADO: The hardest part of it, Senator, is
16 the paper work, the amount of paper work that flows around, but
17 we're working on that.

18 CHAIRMAN LOCKYER: Well, let me just ask you this
19 direct question.

20 MR. ALVARADO: Sure.

21 CHAIRMAN LOCKYER: Your responsibilities are
22 essentially to protect children and youth in this state.

23 MR. ALVARADO: That's a major part of it, yes.

24 CHAIRMAN LOCKYER: That's the essence of your program
25 area.

26 MR. ALVARADO: Senator, I'm not following the
27 question.

28 CHAIRMAN LOCKYER: I haven't finished it, but that's

1 your duty area, is it not, the children and youth segment?

2 MR. ALVARADO: Well, my duties overall, Senator, are
3 -- well, if I may --

4 CHAIRMAN LOCKYER: How do you break it down?

5 MR. ALVARADO: Sure.

6 Under statute, there's two Deputy Secretaries. And
7 it is my understanding over the year that that has evolved into
8 more of an Under Secretary/Deputy Secretary type of structure.

9 My role, as Under Secretary, is more towards the
10 overall management of our departments, the coordination of our
11 departments, and hopefully, the smooth coordination of those
12 departments which would involve a variety of the programs.

13 My counterpart, Ms. Cain, whom you'll have the
14 opportunity to visit with later, is more responsible for the
15 program and fiscal aspects of the Agency.

16 I hope that sheds some light.

17 CHAIRMAN LOCKYER: So you're more programmatic?

18 MR. ALVARADO: I'm more management. I'm more
19 coordination. I would see also more of a unique role in
20 advising our Secretary, Secretary Smoley. She's a very dynamic
21 individual, and because of our working relationship in the past,
22 I think brings a unique perspective to my responsibilities
23 directly to her and then on to the Governor.

24 CHAIRMAN LOCKYER: You worked with her when she was
25 running for State Senate.

26 MR. ALVARADO: I did, yes, Senator.

27 CHAIRMAN LOCKYER: Noted.

28 Now, I noticed you also had a phase of participation

1 in the No on Prop. 65 campaign.

2 MR. ALVARADO: Yes, I did, Senator.

3 CHAIRMAN LOCKYER: Was that essentially a business
4 decision, or one about which you feel philosophically committed?

5 MR. ALVARADO: It was a little of both. I think
6 philosophically, I believed that the less government the better.
7 I had reservations about some of the things that Proposition 65
8 brought about.

9 Secondly, on the business side, I think my role in
10 the Proposition 65 campaign was essentially to coordinate and
11 work with some of the CEOs and managers of organizations that
12 were supportive of the No on Proposition 65 campaign.

13 CHAIRMAN LOCKYER: Is there anyone present who would
14 wish to make any comments for or against?

15 Senator Craven.

16 SENATOR CRAVEN: Mr. Alvarado, this is very simple
17 for you.

18 MR. ALVARADO: Yes, Senator.

19 SENATOR CRAVEN: Tell me what the chief of staff of
20 Sacramento County is?

21 Senator Ayala and I have been with the kind of an
22 outfit for years, and I've never run into that title in county
23 government.

24 MR. ALVARADO: Senator, you may be referring to my
25 title, I was Chief of Staff and administrative assistant to
26 then-Supervisor Smoley.

27 I had nothing -- I was not in the County
28 Administrator's Office.

1 SENATOR CRAVEN: The way that's written, it says
2 simply "'82-84, Chief of Staff, Sacramento County Supervisor,
3 Sacramento."

4 MR. ALVARADO: It should have said Board of
5 Supervisors. I apologize.

6 SENATOR CRAVEN: You were the Chief of Staff of a
7 Supervisor.

8 MR. ALVARADO: That is correct, Senator, yes.

9 SENATOR CRAVEN: That I understand. Thank you.

10 MR. ALVARADO: Thank you.

11 CHAIRMAN LOCKYER: Senator Petris.

12 SENATOR PETRIS: Can you brief me on the Department's
13 program on Proposition 99 funds? We've had a continuing
14 dispute, you know, over the last two or three years which
15 resulted in a couple of lawsuits to prevent the diversion beyond
16 those authorized by the legislation carried by Assembly
17 Isenberg. In both cases, the local Superior Court ruled in
18 favor of the critics of the diversion.

19 It looks like we still have, sprinkled here and
20 there, different diversion efforts, which I have vigorously
21 opposed all the way through. One of the more recent ones has to
22 do with the research part of the funds, 20.6 million to the
23 University of California. Senator Bergeson carried a bill on
24 that to restore those funds for that purpose, and the Governor
25 vetoed it.

26 So, I would like you to tell me, to the extent that
27 you know, what is the current policy of the Department on these
28 various diversions?

1 MR. ALVARADO: Senator --

2 SENATOR PETRIS: Particularly the one on education?

3 MR. ALVARADO: Education into the --

4 SENATOR PETRIS: Excuse me, it's under the overall
5 education title, but it's specifically research by the
6 University of California.

7 MR. ALVARADO: All right.

8 Senator, I think the position of the Department, and
9 I'll speak on what I know about it, is that the diversions are
10 within the scope of Prop. 99, and that when funds are moved
11 about, and when they are diverted, that they are done so
12 consistently with Prop. 99.

13 I understand, as you're saying, that the courts have
14 ruled --

15 SENATOR PETRIS: The courts disagreed with that.

16 MR. ALVARADO: -- otherwise, and so, I think one in
17 particular that I believe you're interested in is the health
18 assessments in the education fund that goes for the Health
19 Assessments Program. I think that's one that we are willing and
20 certainly would like to evaluate to determine the effectiveness
21 of that particular diversion.

22 In terms of providing that particular diversion
23 there, we believe that through health assessments, some
24 education does belong, from the provider's standpoint, to the
25 particular patient in terms of letting them know about the risks
26 associated with tobacco and its use.

27 SENATOR PETRIS: Well, I think the record shows
28 rather clearly that the overall program of Prop. 99, as

1 administered by the Department, in public education and
2 educating the school children -- I've been to classes in my
3 district in which the teacher carried out that function and
4 asked the children questions, and they're remarkably well
5 informed about what tobacco is, and what the dangers are, and so
6 forth.

7 It's undoubtedly the most effective program in the
8 country. It's resulted, through a combination of these
9 programs, including the radio and t.v. advertising and other
10 forms of informing and educating the public, in a dramatic drop
11 in the number of people smoking, especially among teenagers, who
12 are the ones that are the age of where they first start,
13 although more recently that's gone up again.

14 And I get nervous when I hear that, well, we're going
15 to divert it from that demonstrated, very effective part of the
16 program and put it over here, in an area that doesn't come under
17 it. It seemed to me it didn't come under 99 at all, as good as
18 they are, prenatal and perinatal and some other things.

19 I guess there is a long-range medical connection, but
20 not an immediate one.

21 So, I'm not up to date on just what the current
22 projections are that the Department wants to do, especially in
23 view of the fact that, in some of these, it would invite
24 litigation all over again, and we've been through that a couple
25 of times.

26 Maybe that's not in your part of the shop; is it?

27 MR. ALVARADO: It is; however, Ms. Cain, I think,
28 could probably address your concerns about Prop. 99 in

1 particular. She -- that is one of her major assignments, is
2 Prop. 99.

3 I think in general, though, Senator, one of the good
4 and bad points about Prop. 99, of course, is that we see the
5 revenues declining. And hopefully, that means that fewer and
6 fewer individuals are smoking.

7 At the same time, I appreciate very much your
8 concerns about the effective use of scarce resources in making
9 sure that we're doing everything we can to make sure that people
10 learn about tobacco and its use.

11 SENATOR PETRIS: Thank you.

12 CHAIRMAN LOCKYER: Is realignment, restructuring, of
13 state and local part of your universe?

14 MR. ALVARADO: It is, Senator. Jeanne Cain and I
15 share that, along with Secretary. She's very interested in that
16 herself.

17 Part of my responsibility, and I've had the
18 opportunity to work at the federal level, at the White House as
19 special assistant to the President for governmental affairs, and
20 at the county level, and now at the state level, so I think that
21 the whole issue of realignment is one that falls particularly in
22 my interest in how we realign these days of scarce revenues and
23 making sure that the programs are efficient as possible.

24 It is an issue. It is a portfolio that the Secretary
25 herself, as I mentioned, is very interested in.

26 CHAIRMAN LOCKYER: Who did you work directly for in
27 Washington?

28 MR. ALVARADO: Directly, I was appointed by President

1 Reagan. I worked directly for Mr. Meese, and then Mr. Baker
2 after that. I'm sorry, Mr. Baker and then Mr. Meese. Ed
3 Rollins was the head of the department for awhile.

4 CHAIRMAN LOCKYER: I'm curious, who was the
5 benefactor? I don't know the right descriptor, other than
6 rabbi, mentor, the person that helped shoe-horn you into the
7 Washington work. Usually there's someone that pulls you along
8 with them.

9 MR. ALVARADO: Sure. I can tell you briefly, if I
10 could, and then if you'd like me expand, I shall.

11 At the time I was working for then-Supervisor Smoley,
12 she was the President of the National Association of Counties.
13 As such, she had a national role to play in addition to her
14 responsibilities here in Sacramento County.

15 The individual who asked me to come back to
16 Washington for the interview was a gentleman named Lee
17 Verstandic, who at that time -- this was in August, I suppose,
18 of '84 -- was the advisor to the President on intergovernmental
19 affairs. He came out for a visit, here to Sacramento.

20 We spent several hours together, talking about
21 programs and issues, and my predecessor had decided that he
22 wanted to go back to Phoenix after being in Washington for a
23 number of years. And Mr. Verstandic called me and asked me if I
24 would be interested, and I said I would be honored to come back
25 and visit about the post.

26 And that's really how it happened.

27 CHAIRMAN LOCKYER: Did I ask if there was anyone
28 present, I think I did, that wanted to make any comment? Are

1 there further questions?

2 I guess more intuitive than anything else, this
3 appointment raises questions for me of how to balance the
4 Governor's and Secretary's presumptive right to select the
5 deputies that they would wish, with my own intuitions, which are
6 that philosophically, I wouldn't want to vote for you. I don't
7 have a lot of evidence to support that worry, and I guess with
8 sufficient time to dig around, might come up with something. It
9 may not matter anyhow, given the presumption of appointments
10 that people are entitled to make.

11 I express that worry for the record.

12 What's the pleasure of the Committee?

13 SENATOR CRAVEN: Move.

14 CHAIRMAN LOCKYER: Craven moves the appointment be
15 confirmed.

16 Call the roll, please.

17 SECRETARY WEBB: Senator Ayala.

18 SENATOR AYALA: Aye.

19 SECRETARY WEBB: Ayala Aye. Senator Beverly.

20 SENATOR BEVERLY: Aye.

21 SECRETARY WEBB: Beverly Aye. Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Petris Aye. Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Craven Aye. Senator Lockyer.

26 CHAIRMAN LOCKYER: Aye.

27 SECRETARY WEBB: Five to zero.

28 MR. ALVARADO: Thank you very much, Senator.

1 If I may, on that last point you made, I'd be
2 privileged and honored to come over any time and share with you
3 any questions on my philosophy or anything. I really would.
4 So, please call me, or I'll take the initiative to call you, if
5 I may.

6 CHAIRMAN LOCKYER: Thank you very much.

7 Okay, we have Ms. Cain next. You're the one that's
8 going to respond to Senator Petris's inquiries about Prop. 99, I
9 think.

10 MS. CAIN: Of course.

11 Good afternoon. My name is Jeanne Cain.

12 I'd like to take a few minutes to share with my
13 qualifications for the position.

14 I've had the pleasure, for the last 15 years, to work
15 on health and welfare issues. I've worked as a program analyst
16 in the Department of Social Services on in-home supportive
17 services program.

18 I've worked in the Department of Finance as a budget
19 analyst. I did the public health budget.

20 I worked on the -- as a consultant in the Assembly
21 Minority Ways and Means Committee.

22 CHAIRMAN LOCKYER: Who was the --

23 MS. CAIN: Assemblyman Baker.

24 And I worked as a legislative coordinator in the
25 Health and Welfare Agency. And since December 1st, I've
26 functioned as the Deputy Secretary for Health and Welfare
27 Agency.

28 I've had some successes; successes in that I staffed

1 the bill that created the Medi-Cal drug rebate program that
2 Mr. Baker carried. I've worked with Assemblywoman Speier on
3 child support bills. I was part of a team that looked at
4 changing or making some changes in the health care reform arena.

5 I think from that, the most notable is our HIPC, the
6 Health Insurance Plan of California. And we've actually
7 expanded access to those who could not achieve or get insurance
8 by 20 percent of our enrollees in HIPC.

9 So, that's some background, a track record.

10 And whether this was a good thing for Senator Petris,
11 I worked for Assemblyman Baker on the initial authorization of
12 Prop. 99. I worked for the Managers Medical Insurance Board for
13 the first re-authorization, and now working on the second
14 re-authorization. And hopefully, I won't have to work on the
15 third re-authorization. It's been a very daunting task.

16 And in fact, I believe the conference committee is
17 meeting now --

18 CHAIRMAN LOCKYER: By second, you mean now or --

19 MS. CAIN: Yes.

20 CHAIRMAN LOCKYER: This is the second?

21 MS. CAIN: I believe it's the second, so I've done
22 this three times from the very beginning.

23 So, I am requesting support for my confirmation. I'd
24 be happy to answer your questions.

25 CHAIRMAN LOCKYER: Is there anyone present that
26 wanted to express any opinions?

27 MS. KEESLAR: Thank you, Mr. Chair.

28 Karen Keeslar on behalf of the California Nurses

1 Association.

2 Sometimes the nurses have won in working with Jeanne
3 Cain; sometimes the nurses have lost in our work with Jeanne
4 Cain, but always the process is fair, thorough, and above-board.

5 CHAIRMAN LOCKYER: When did you lose?

6 MS. KEESLAR: When did I leave?

7 CHAIRMAN LOCKYER: Lose.

8 MS. KEESLAR: When did we lost. Actually, this year
9 we haven't specifically lost. There've been a couple of things
10 dealing with medical assistance, a Burton bill, that we had
11 asked for the Agency's support.

12 There have been some issues on the Clinical Lab
13 Improvement Act that we've worked with the Agency. Those are
14 still things under negotiations.

15 What we have found very consistently is that she
16 listens and inspires state bureaucrats, who are buried in the
17 bowels of these departments, also to listen as well with renewed
18 skill.

19 For those reasons, we would ask for your support.

20 CHAIRMAN LOCKYER: Anyone else present?

21 Questions from Members? Senator Petris.

22 SENATOR PETRIS: You've been with IHSS since the
23 beginning, I gather.

24 MS. CAIN: I worked -- it was in the '70s for the
25 in-home supportive services program. I was part of the group
26 that implemented the automated payrolling system, so it's been
27 quite a few years.

28 I know the program, the eligibility, the clients, and

1 how counties administer the program, and how we reimburse
2 individual providers. So, I've had some history with SCIU,
3 working on those issues.

4 SENATOR PETRIS: It's taken a beating in the budget
5 this year; hasn't it? Is there anything left of it?

6 MS. CAIN: Well, the in-home supportive services
7 program has not received any reductions in the budget, because
8 we -- under realignment, we transferred the funding for in-home
9 supportive services, so it has not had any reductions in the
10 budget.

11 Are you thinking of the realignment or restructuring
12 concerns?

13 SENATOR PETRIS: I don't remember the mechanism, but
14 consistently in the last two weeks, I've seen IHSS pop up as
15 taking a real beating. I don't remember the dollar figure.

16 MS. CAIN: There was two issues that came up in
17 January. One was the restructuring, and there was some concern
18 that the state would walk away from taking care of the clients.

19 And the other was, in January, we proposed
20 substituting federal funds for general funds for the provision
21 of services by relative providers.

22 Right now, we would have to have a federal law change
23 to permit to use federal funds to reimburse relative providers.
24 In order to reduce or save general funds, we've proposed going
25 for a federal law change.

26 It as in May we withdrew that proposal, because we
27 found that when we looked at the -- the assumptions had changed.
28 We weren't going to get a federal law change. We did not want

1 to lose these -- this group, this family, providing a service,
2 so we withdrew that proposal.

3 And as late as June, I know I was preparing letters
4 for the Secretary's signature to make it clear we withdrew that
5 proposal.

6 That might have been what you're referencing. There
7 was still some confusion over that.

8 SENATOR PETRIS: Does the federal law prohibit the
9 payment of family member?

10 MS. CAIN: Yes.

11 SENATOR PETRIS: We've been doing that for years.

12 MS. CAIN: Through Title 19. So, what we've done is,
13 for the majority of our program, we fund it through Title 19
14 Medicaid law, and it's under personal care services.

15 And for whatever reason, the limitations of the
16 Medi-Cal program are significant at the federal level, and they
17 preclude the reimbursement of family as a provider for services.

18 So, we did anticipate drawing down federal funds for
19 that, but decided we could not risk losing those providers, and
20 we withdrew that proposal.

21 SENATOR PETRIS: But our state program isn't limited
22 to those under Medi-Cal; is it?

23 MS. CAIN: No, we have a residual program, and we've
24 not made any budget reductions to that program. It stayed the
25 same.

26 SENATOR PETRIS: What proportion of that is that of
27 the total?

28 MS. CAIN: I don't remember. I can get that for you.

1 It's not very much. It's a pretty small program now, because
2 we've tried to maximum federal funds wherever possible, and for
3 the large majority of the cases, we've done that for IHSS.

4 SENATOR PETRIS: This isn't a matter of a waiver; you
5 actually have to get the law changed?

6 MS. CAIN: Exactly. It's not waiveable, which is why
7 we withdrew it. We were not getting any positive signals, and
8 that created great concern for the families.

9 SENATOR PETRIS: You mean signals from Congress?

10 MS. CAIN: Yes, they were not responsive.

11 SENATOR PETRIS: Have you tried Congressman Stark?

12 MS. CAIN: I'm sorry?

13 SENATOR PETRIS: Have you tried to get Congressman
14 Stark's help in your efforts?

15 MS. CAIN: What we did is, we worked all those
16 proposals through the Department of Finance. They were the lead
17 on trying to get federal law change. We had three individuals
18 working on that: Kevin Sloat, Sam Yaki, Bill Hauck, who were
19 our consultants going back to work with Congress. And they said
20 drop it. We're not getting any positive response, and we were
21 concerned about the program. So, we withdrew it in May, our May
22 Revise.

23 SENATOR PETRIS: No point in pursuing the names, but
24 I thought Waxman might be helpful.

25 MS. CAIN: Well, you know, I think it was, all the
26 issues that were going on back there they wanted prioritized,
27 and this one wasn't high enough, so we didn't want to pursue it.
28 We wanted to make sure we protected the program. So, we went

1 ahead and moved off of that.

2 SENATOR PETRIS: Mentioning Congressman Waxman brings
3 up the tobacco fight.

4 MS. CAIN: Yes, oh, yes.

5 SENATOR PETRIS: Can you describe to me just where we
6 are now on our program with respect to protecting, to the
7 maximum extent possible, the 99 funds for the purposes they were
8 originally intended, especially on research. You heard the
9 questions I'd asked previously?

10 MS. CAIN: Yes.

11 SENATOR PETRIS: Can you help me on that?

12 MS. CAIN: I sure can.

13 In January, when we released the budget, we had
14 proposed basically the same structure that had been contained in
15 the initial Prop. 99 expenditure plan and the re-authorization,
16 and that is with two changes: eliminating the mountain lion
17 initiative, which we were using those freed-up resources to fund
18 caseload increases for the CHTP program. And the reason we did
19 that was to take the pressure off the Health Education Account.

20 We did not deviate much from the prior proposal. So
21 your concerns that you've had, I can imagine, since the
22 beginning are still there.

23 We recommend -- and conference committee met this
24 morning while I was here, and I think they're still meeting, to
25 take actions on the tobacco expenditure plan -- would propose
26 to fund that 29 million of the Health Education Account for the
27 CHTP program.

28 Now, I think what I've tried to talk about when

1 people have expressed concern is that we do have an anti-tobacco
2 education message in that program. I think where we differ is,
3 do you believe that's successful? And I don't have any evidence
4 to say that it isn't, and I'm willing, over the next two years,
5 to evaluate it.

6 And when we have the sunset -- because we're
7 proposing a two-year sunset -- that we start all over, because I
8 think the revenues -- because we're also so successful with our
9 media campaign in our local media agencies, and our community
10 organizations, and schools. This revenue should decline
11 significantly. That was the point of the initiative.

12 SENATOR PETRIS: Well, I understand it has.

13 MS. CAIN: It has. And I think it will continue to
14 decline, and then in two years, we have to start all over. I'm
15 not even sure --

16 SENATOR PETRIS: If you succeed, it'll self-destruct;
17 won't it?

18 MS. CAIN: And I hope it does because that's the
19 whole point.

20 But in the process of doing that, it becomes
21 difficult to negotiate an expenditure plan, because individuals
22 and organizations have built programs around a certain amount of
23 revenue. So, the struggle you're seeing is a struggle of
24 scarcity of resources. And I think in two years, and we've
25 recommended this, and we've testified to this in committee, we
26 need to evaluate all the expenditures, not just CHTP, all of
27 them.

28 And let's make a decision -- in two years, I can tell

1 you. And what I can't tell you now is what's successful. We
2 have anecdotal information, but nothing specific.

3 So, I can't even make a recommendation to you that I
4 feel confident is reflective of what's going on. So, we have to
5 provide that information. In two years, you should be able to
6 say: yes, that works; no, that doesn't; we can't fund that.
7 And that's our goal.

8 SENATOR PETRIS: But the moves are still being made.
9 There's at least one bill floating around, maybe two, that
10 supports diversion even further.

11 I'm told they're not worried about the four-fifths
12 requirements. How do you get around that, anyway?

13 MS. CAIN: I think the most recent budget decisions,
14 where we're going to divert research funds to fund a health
15 program in Health Services, the Access for Infants and Mothers
16 program, the AIM program, we are redirecting -- we, and I do it
17 the royal "we" -- are redirecting funds for evaluating.

18 As of Friday, and I have not seen the bill, but so
19 far, it's still a two-thirds vote bill. I don't know by
20 including the budget decisions what happens to the dynamic of
21 the vote. I would defer to Leg. Counsel.

22 SENATOR PETRIS: How do you get from four-fifths to
23 two-thirds, is my question?

24 MS. CAIN: The issue traditionally, with the
25 authorization and re-authorizations, it's always been a
26 two-thirds vote bill. Even with using Health Education money
27 for CHTP, Leg. Counsel's always tagged it as a two-thirds vote
28 bill.

1 With the latest changes, I don't know if that will
2 change the Leg. Counsel recommendation. You know, when they put
3 it on the bill, vote, it's always been two-thirds.

4 I have not seen the bill in print to know if it
5 changes the vote.

6 SENATOR PETRIS: Last night we had a measure on the
7 Floor to simply borrow money from Prop. 99.

8 MS. CAIN: The Controller's --

9 SENATOR PETRIS: Yes. That required four-fifths.

10 MS. CAIN: Did he get it?

11 SENATOR PETRIS: Yes. And that, you know, we're
12 going to pay interest on that.

13 So, how can we require four-fifths where they're not
14 losing a dime, and go back to two-thirds for much more serious
15 changes? I don't understand that.

16 MS. CAIN: I think the difference is, it's over the
17 interpretation, and this -- I'm not an attorney, so I will use
18 my layman's terms -- is that the initiative provides for a vote
19 by the Legislature to amend provisions of the initiative
20 consistent with its intent. Key words: its intent.

21 There are five principles of Prop. 99. It's health
22 education, research, resources, hospitals services, physician
23 services.

24 And where we get in a discussion of the issue is, if
25 you provide funds from any account that is consistent with any
26 of the principles of the initiative, is that permitted by the
27 initiative.

28 CHAIRMAN LOCKYER: It's a two-thirds if it is?

1 MS. CAIN: We say it is, because it's still
2 consistent with the intent.

3 CHAIRMAN LOCKYER: Four-fifths is inconsistent?

4 MS. CAIN: It would be changing the purposes of the
5 article.

6 Again, I'm not an attorney, and so when I'm debating
7 this, you'll tell that I don't have the legal background.

8 But that's been a struggle.

9 SENATOR PETRIS: Well, I guess we'll have to ask
10 Counsel, also. My understanding, and I haven't read it for a
11 long time, but my understanding was, number one, any change
12 that's made by the Legislature must be consistent with the
13 primary purposes, whether it goes four-fifths, or whatever the
14 vote is. It still has to be consistent.

15 MS. CAIN: Right.

16 SENATOR PETRIS: It seems to me, if there's a move
17 that's inconsistent, there's even more reason to stick with
18 four-fifths than in the other cases.

19 MS. CAIN: I think the inconsistency issue gets you
20 into issues with the court, and so we fight over: is this
21 consistent, yes; now what's the vote required.

22 SENATOR PETRIS: The court has said both times you're
23 going in the wrong direction.

24 MS. CAIN: They have not ruled on the CHTP piece, if
25 my memory serves me correctly.

26 SENATOR PETRIS: I don't have any recollection there.
27 All I know is, it's two-for-two so far in the other direction.

28 Thank you.

1 CHAIRMAN LOCKYER: Any other questions from Members?
2 You've been there since November?

3 MS. CAIN: December 1st is when I was sworn in, and
4 part of it, I had been the prior three years as the legislative
5 coordinator for the Agency, worked on, obviously, the
6 legislative bills, and testifying, and making recommendations to
7 the Governor's Office.

8 CHAIRMAN LOCKYER: Telling us why something's going
9 to get vetoed.

10 MS. CAIN: Yes, and we share letters. We make calls
11 so Members know our position.

12 CHAIRMAN LOCKYER: What's been the hardest part of
13 the job since your promotion?

14 MS. CAIN: Changing from being in a legislative role
15 to a program fiscal role. Because I had worked for Assemblyman
16 Baker, and worked as a leg. person, you have -- you look at
17 things -- you have a different schedule, a different type of
18 workload, different type of paper.

19 So now, I'm trying to switch into more the routine,
20 day-to-day things that come up, and I've got much more involved
21 in the budget, which I prefer. I think that's my Department of
22 Finance background, and I miss Ways and Means every so often.
23 Not the hours, but just the involvement and the excitement when
24 you try to make things work.

25 CHAIRMAN LOCKYER: Senator?

26 SENATOR PETRIS: May I go back? I forgot one area.

27 I was reminded when you mentioned fiscal, and you
28 said there are fiscal responsibilities.

1 There seems to be a major disparity in the estimates
2 of the cost of health care, various plans. And your
3 Department's estimate differs very substantially from those made
4 by Rand Corporation, the Congressional Budget Office, and our
5 own Legislative Analyst. And they're all studying the same
6 thing.

7 I had two questions. One is, how do you explain the
8 very big difference?

9 And the other is, in the fiscal studies that the
10 Department has made, has a single pay system been studied for
11 that purpose?

12 MS. CAIN: Okay. The answer to the first question
13 is that I think we have -- we used information that maybe either
14 other individuals have not thought of. You know, EDD has
15 information on the types of employers in the state, their
16 average wage. Then you can actually do statistical runs to try
17 to determine how much a subsidy would cost given the type of
18 workforce we have.

19 And in California, we have -- our economy's changing,
20 and we have the service type industry, which has lower wages,
21 which would be more eligible for the subsidies.

22 So, I think some of it is, we used information that
23 either others had not asked for or have considered. I think
24 that's the major reason.

25 In terms of the single payer, we've looked at the
26 impact of the single payer from both the administrative savings,
27 which you would save if you converted to a single payer system
28 because you get rid of the third party, the insurance companies,

1 et cetera.

2 And we counter that with, okay, we know those are
3 savings, and that's very important. But what is the impact of
4 the tax changes that would be required for the single payer?
5 And our concern is that -- and this is more than just our
6 Agency. It's the administration, because we worked with other
7 entities besides the Health and Welfare Agency -- is the impact
8 of the payroll tax on business. Will they leave California?
9 Will they not come into California?

10 If we have a higher income tax on individuals, we
11 have the highest wage earners leaving California now. Will we
12 push more of them away? We need those people to pay the taxes
13 so we can support the programs to help those who can't help
14 themselves.

15 So, when I look at things, I worry that if we don't
16 maintain some revenue, I'm not gong to have the funds, because
17 we have a large portion of the general fund budget, to take care
18 of the aged, the blind, disabled, for health care, preventative
19 care.

20 And so we looked at it from that perspective, and we
21 struggle. We don't have the answers, but when we look at it,
22 what we would prefer, and we've pursued this, is a targeted
23 approach, trying to find the weaknesses in our system and fix
24 those before we make such a massive change, because we're unsure
25 of the tax impact of the massive change.

26 SENATOR PETRIS: Well, I don't want to prolong this,
27 but I'm interested because the single payer has qualified for
28 the ballot.

1 MS. CAIN: Yes.

2 SENATOR PETRIS: And I would hope you'd be studying
3 that and informing the public as to what you find out.

4 Now, I have found out, in carrying that legislation,
5 and talking to companies, that the payroll tax is lower than
6 most companies that carry insurance. The problem is, an
7 enormous number, especially the small ones, don't carry any, and
8 they're part of the problem.

9 But among those that carry it, when we asked them,
10 "Would you support a bill that had a payroll tax of seven
11 percent?" We tried to stay at five, but we went up to seven, it
12 was half; it was half of what many of the large companies are
13 paying. They're going fourteen. And they said, "Show me a plan
14 that is limited to that amount, and I'd be delighted to support
15 it," which conflicts with some of the conclusions that have been
16 reached by people who are studying it now.

17 MS. CAIN: I think that we agree that for large
18 companies who provide insurance, they would have a reduction.

19 It is the small employer, and the service employers,
20 who don't have it, and so the burden, if you want to call it a
21 burden, of the costs that's placed upon them, and that is the
22 fastest growing sector in terms of creating jobs, are small
23 business.

24 So, before we contemplate changing the system
25 wholesale, are we sure that the tax that we put on the small
26 business, who are the ones creating the jobs, will not turn
27 around and either have them leave or stop the job growth. And
28 we need that job growth to keep our -- the strength of our base.

1 SENATOR PETRIS: I can understand that, but just in
2 closing, what I've tried to do in my bill, especially with the
3 title, which is called the Right to Health Care Act, we take it
4 for granted that the small business person has to pay the rent
5 on the building, and has to meet certain other standing
6 obligations, overhead and all that, including minimum wage.

7 I'm trying to get the mindset changed so that has to
8 be included -- the package also covers health care -- under the
9 notion that we must have a universal system, and that
10 everybody's entitled to health care, and, of course, will be
11 required to pay into it. It's not a free program.

12 Anyway, thank you. I appreciate your comments.

13 Thank you, Mr. Chairman.

14 CHAIRMAN LOCKYER: Other comments? Questions?
15 What's the pleasure of the Committee?

16 SENATOR BEVERLY: Move we recommend confirmation.

17 CHAIRMAN LOCKYER: We have a motion by Senator
18 Beverly. Call the roll, please.

19 SECRETARY WEBB: Senator Ayala.

20 SENATOR AYALA: Aye.

21 SECRETARY WEBB: Ayala Aye. Senator Beverly.

22 SENATOR BEVERLY: Aye.

23 SECRETARY WEBB: Beverly Aye. Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Petris Aye. Senator Craven.

26 SENATOR CRAVEN: Aye.

27 SECRETARY WEBB: Craven Aye. Senator Lockyer.

28 CHAIRMAN LOCKYER: Aye.

1 SECRETARY WEBB: Five to zero.

2 MS. CAIN: Thank you very much.

3 CHAIRMAN LOCKYER: Thank you. Good luck.

4 Our last one is Mr. Michael Mayer. I think this is
5 fairly brief. It's the Teachers Retirement Board.

6 Good afternoon, sir.

7 MR. MAYER: Good afternoon, Mr. Chairman, Members of
8 the Committee.

9 CHAIRMAN LOCKYER: Let me just call Members'
10 attention to Tab 8.

11 Your particular slot, sir, is what kind of expertise?

12 MR. MAYER: The banking or savings and loan official.

13 CHAIRMAN LOCKYER: And, of course, that's where
14 you've been working for years.

15 I make note that there's no opposition that's been
16 received.

17 Do you want to add anything briefly, sir, about the
18 job, and why you like it?

19 MR. MAYER: I've been involved in commercial banking
20 for 15 years, and the challenges of a commercial banker with
21 fiduciary responsibilities for accepting deposits and investing
22 are similar to those of a Board member for STRS. And those
23 being equal, I believe I have the ability and the willingness to
24 accept those challenges.

25 CHAIRMAN LOCKYER: Other questions from Members?

26 Anyone present that wishes to comment?

27 What's the pleasure?

28 SENATOR BEVERLY: Move we recommend confirmation.

1 CHAIRMAN LOCKYER: We have a motion by Senator
2 Beverly. Call the roll.

3 SECRETARY WEBB: Senator Ayala. Senator Beverly.

4 SENATOR BEVERLY: Aye.

5 SECRETARY WEBB: Beverly Aye. Senator Petris.

6 SENATOR PETRIS: Aye.

7 SECRETARY WEBB: Petris Aye. Senator Craven.
8 Senator Lockyer.

9 CHAIRMAN LOCKYER: Aye.

10 SECRETARY WEBB: Lockyer Aye. Three to zero.

11 CHAIRMAN LOCKYER: Thank you, sir. Good luck.

12 There is a call on. We could lift that, if you wish.
13 This is Mr. Going. It's currently two-to-one, so call the
14 absentees.

15 SECRETARY WEBB: Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Beverly Aye. It carries three to
18 one.

19 CHAIRMAN LOCKYER: That measure is passed.
20 Congratulations, sir, or condolences, whichever is appropriate.

21 I think we probably ought to take a break, partly to
22 allow Senator Petris time to review some of the materials that
23 we discussed earlier. We'll try to resume at 2:00 o'clock. I
24 don't think we'll be more than half an hour when we get back.

25 Thank you very much.

26 [Thereupon a luncheon recess was taken.]
27
28

AFTERNOON PROCEEDINGS

--oo0oo--

CHAIRMAN LOCKYER: May we jump back to Russ Gould now.

Mr. Gould we left off, I guess, principally with Senator Petris wanting a chance to review Committee documents.

SENATOR PETRIS: Well, I looked through them. I didn't get to really study them, having been besieged by a number of things, but I want to at least cover the two areas I mentioned and maybe one other.

The first is on the -- let's go to the second one.

CHAIRMAN LOCKYER: You had the land purchases, and you had the four-tenths curies waste stream.

SENATOR PETRIS: What I was thinking of was the purchase, which I indicated seems to be an unusual way to go. I ended by saying that according to my recollection, the normal procedure when the feds have some surplus land, they either give it to the state if the state proves it qualifies as a land creditor, where the feds still owe us some land that they haven't released. And in that case, they give it to the state, or there's an outright direct sale.

But I don't know why you're going through this other mechanism of having a private company buy it and then get credit through the fees that it will be paying over a period of time. Can you explain that for me?

MR. GOULD: I'll try to, Senator.

I looked into the history of it after you mentioned what the issue was, and it actually goes back to 1986.

1 And apparently the original agreement that was
2 reached with the selected contractor, which was U.S. Ecology, is
3 that all developmental costs for the site would be borne by the
4 contractor. And then the contractor would be reimbursed by the
5 disposal fees they charged on people who were disposing of
6 waste.

7 So, that was always envisioned as part of the
8 contractual agreement with the selected vendor or contractor.

9 I think you're correct. Initially the contract was
10 to go through an indemnity selection process, which is the issue
11 where the federal government still owes the state land. And I
12 think it goes back to 1852, and it has to do with provisions
13 where we still are to be deeded additional school lands.

14 That acquisition has to go through the State Lands
15 Commission. The State Lands Commission withdrew the application
16 for indemnity selection, and so the Department of Health
17 Services said, well, then, we will do a direct purchase.

18 The purchase and the title would have been to the
19 Department of Health Services, but consistent with the MOU
20 arrangement that was arranged in 1986, the monies would be
21 provided for by the vendor for the purchase, but it would
22 actually be title held by the Department of Health Services.

23 And so, the whole idea was that the state wouldn't
24 incur costs, because this is a function where all costs were to
25 be absorbed by those using the facility, and therefore have all
26 costs paid for by those who would deposit waste at the facility.

27 SENATOR PETRIS: I understand that in the
28 reimbursement, they've included promotional costs that really

1 aren't normally -- you know, they're kind of their own
2 promotional and advertising costs, and there are a couple other
3 items which I don't recall at the moment. But one of the
4 questions is, why are those being included? They should be
5 absorbed by the contractor.

6 MR. GOULD: I'm not familiar with that at all.

7 Senator, I'll be glad to look into it.

8 SENATOR PETRIS: Let's see if I can find it here.

9 MR. GOULD: This is certainly not a Department of
10 Finance issue at this point, but I'd be glad to have, you know,
11 notify appropriate parties to have them respond to that.

12 SENATOR PETRIS: I failed to mark it, so I'll need a
13 couple of seconds here to pin it down.

14 CHAIRMAN LOCKYER: I don't know if you had an
15 opportunity to talk with the Deputy Director during our break,
16 your appointee on Public Works.

17 Any new information on that subject or dispute?

18 MR. GOULD: Yes, in fact, we're putting together a
19 chronology that goes through how there was actually a
20 notification to the Legislature, override, even entire
21 chronology.

22 I hope to be able to put that together and provide
23 the Rules Committee all an explanation of exactly what
24 transpired.

25 CHAIRMAN LOCKYER: That would be helpful. I know
26 there's plenty of other things happening, but if it's possible
27 by Thursday, I think it would be constructive for the Floor, if
28 it's do-able.

1 MR. GOULD: Okay.

2 CHAIRMAN LOCKYER: Senator Ayala had similar
3 thoughts.

4 SENATOR AYALA: May I ask that you include in that
5 report the situation where Senator Boatwright indicated that,
6 although the Legislature approved 3.5 million [sic], you ended
7 up with 44 million. I don't think it went into retrofitting,
8 but for a new building; is that what I understand?

9 MR. GOULD: I don't know, Senator. I haven't had a
10 chance to look into it.

11 SENATOR AYALA: Who authorized and how it came about
12 that they were able to increase the amount that the Legislature
13 approved without coming back.

14 I know changes that come everytime of a construction
15 project, but the contract of its own doesn't do it. They come
16 back and get authorization from the governing board, whoever
17 that may be.

18 In this case, I don't know who that would be. Maybe
19 it was your office that had that authority; I don't know. But
20 would you give us a full report on that?

21 MR. GOULD: I'll make sure that's included in the
22 response.

23 SENATOR AYALA: Thank you.

24 SENATOR PETRIS: Thanks, Mr. Chairman, I have it
25 here.

26 According to project opponents, a number of
27 questionable expenses have been incurred by U.S. Ecology for
28 which they seek reimbursement.

1 I wouldn't call them questionable expenses unless
2 they ask us to pay for it. If they're asking us to pay, I think
3 it's questionable.

4 \$101,000 to a public relations firm for public
5 relations consulting, presumably on how to approach you or us.
6 You know, part of that PR problem.

7 Another one, 15,000 for preparation and delivery of
8 expert testimony by a hydrology consulting firm during your
9 confirmation hearings. I don't think that's appropriate at all.

10 The next one is \$1715 to a small company for
11 materials for a U.S. Ecology-sponsored float for the City of
12 Needles Annual Rodeo Parade. That seems out of line.

13 These are probably coming to your attention for the
14 first time, so I don't expect you to have an answer, but I would
15 like you to check them out.

16 MR. GOULD: I'll be glad to.

17 SENATOR PETRIS: Then there's also undetermined
18 amounts for the cost of litigation in the Third District Court
19 pertaining to the adjudicatory hearing, to the issue of the
20 adjudicatory hearing.

21 So, the criticism is that the Department hasn't done
22 enough to discourage U.S. Ecology from trying to make these kind
23 of claims. I guess there hasn't been an ongoing monitoring or
24 proper exchange. And apparently those kinds of expenses are
25 still being incurred.

26 So at the very least it ought to raise a flag of
27 warning that they should be, assuming you concur that one or all
28 of these are out of line, that they should be so advised, so

1 they don't keep submitting reimbursement claims for matters that
2 really don't have anything to do directly with the development
3 and operation. I'm not questioning those kinds of expenses.

4 Another area has to do with, did you comment on the
5 indirect purchase? You said you're going to check on that, too.
6 The purchase of the land by U.S. Ecology as opposed to having
7 the state purchase it directly, and then have them reimbursed.

8 I don't understand that. Do they keep title after
9 they purchase it?

10 MR. GOULD: No. Title must be held by the Department
11 of Health Services; it must be held by a government entity.

12 SENATOR PETRIS: That's what I thought.

13 MR. GOULD: Right.

14 SENATOR PETRIS: So the question is, why are they
15 playing this role in actually doing the buying? Are they our
16 agents for that purpose?

17 MR. GOULD: Well, I think from that start of the
18 project back in 1986, as I understand the history, the state was
19 not to incur costs. The costs were to be borne by people using
20 the facility. So, people who had waste to dump at the facility,
21 that they will bear the cost of any of the operation, including
22 the land.

23 I think the original thinking was, it was going to be
24 done through indemnity selection, where there is no cost; it's
25 merely the federal government fulfilling its obligation to
26 provide land to the state. When that avenue was cut off, then
27 the question of a direct purchase, but still the state was
28 operating under the MOU with the contractor that there would be

1 no costs borne by the state.

2 So therefore, the use of U.S. Ecology funds in order
3 to provide for purchase, even though the title remains with the
4 state, was appropriate in that it would be reimbursed by users.
5 And so, keeping with the basic principle that the state wouldn't
6 incur costs, it was in keeping with the contract and MOU.

7 SENATOR PETRIS: I realize this happened way back in
8 '86, and you weren't part of it.

9 MR. GOULD: Right.

10 SENATOR PETRIS: So, I can make the questions very
11 hostile without directing them at you; okay?

12 Why in the world would they have an agreement that
13 the state wouldn't have any costs? How does the state expect to
14 be, if you know from what you've read, the state expects to be
15 the owner of property for a particular reason. Why would the
16 state expect to get it free, is what it amounts to, through this
17 elaborate structure of reimbursing through the fee schedules and
18 so forth.

19 Do you have any clue on that?

20 MR. GOULD: Frankly, I'd have to spend more time
21 going back. Obviously, that was far before I was ever in that
22 operation. I'd have to go back to some of the original
23 legislation, and how we got to this point.

24 I just don't have that much history on it.

25 SENATOR PETRIS: I'd be interested in that. It may
26 be very beneficial to the state, and I'll yield to that. But to
27 me, I just don't understand what the object was, and so forth;
28 why we're going about it in that way.

1 Now we have another area, which is the information we
2 were given. As I said this morning, I don't want to retry the
3 Ward Valley stuff, but inevitably we have to get into a little
4 part of it at least. That has to do with information we were
5 given at the time during your confirmation regarding the stream
6 of dangerous substances, in this case plutonium, and the
7 projections.

8 Now, the information we were given was that there
9 would be about four-tenths of a curie -- Madam Eve Curie, I
10 guess, is the source of that -- four-tenths over a certain
11 period of time, which was deemed to be safe either by the
12 Department or whoever was making this study on behalf of the
13 Department. And that may have been before your time, too; I
14 don't know. It was done by Health Services.

15 After the confirmation hearings were ended, I don't
16 know just what point in time, but later on, we learned that
17 there was a very serious underestimate in the EIR report. When
18 the final EIR report was released, it indicated that instead of
19 four-tenths of a curie, we're talking about 3,448 curies over
20 the life of the facility. Now, that's 30 years, but that's the
21 period of time that the other one was based on as well.

22 The information also indicates that U.S. Ecology
23 informed the Department of that several months before the
24 release of the final EIR.

25 We've got a very serious discrepancy here. The
26 numbers are meaningful because they describe the degree of
27 hazard, obviously. If four-tenths of a curie is okay and safe,
28 that's fine. But when we're talking about almost 3500, that's

1 another matter.

2 Now the question is, do you know any of this? Do you
3 remember it? Did you have knowledge of it at the time?

4 MR. GOULD: No, I didn't, but I've looked into it.

5 I know that the issue surfaced -- the first time I
6 was aware of it -- in a letter that Senator Boxer sent to the
7 Governor, which was in April of this year. And I think it had
8 to do with actions of the Department of Health Services in
9 September of 1993. I was no longer Health and Welfare Secretary
10 at the time, but let me explain. And I can provide you a copy
11 of the Governor's response back to Senator Boxer that clarifies
12 that issue.

13 I should also say that this issue has been looked at
14 in terms of the question of: did the Department in any way try
15 to mislead or not provide sufficient information to the public,
16 and that was reviewed by the Superior Court in Los Angeles, and
17 it was determined that that claim was without validity.

18 But in spite of that --

19 SENATOR PETRIS: Which claim was that?

20 MR. GOULD: The claim that the Department in any way
21 intentionally misrepresented the amount of curies, because that
22 information had actually been out in public for some years. It
23 had been something that critics of the facility had raised
24 concerns about, that having that much material in the site was
25 of concern to them. So, it wasn't new information, nor a
26 surprise.

27 The difference really gets down to, the Department,
28 as I understand it, had a very difficult time in estimating what

1 the total volume would be. And so, they took a very high
2 estimate. In order to be conservative, they said: let's assume
3 that it is 3,500 curies, when in fact the historical data that
4 they had showed that it was going to be closer to .45 curies.

5 But rather than -- being that this was part of the
6 license application, being this was out there already as the
7 public statement as to what would be a safe facility, because
8 they built the facility to specifications to hold 3,500. So the
9 fact that our historical data looks like it is going to be
10 substantially below that just meant that it was built to be very
11 safe, and that in fact you'd be better overestimating and having
12 a facility that could handle that capacity many times over, than
13 in underestimating.

14 And they didn't want to revise the data in order to
15 avoid any lack of public confidence, that in fact it could
16 higher a much higher number.

17 So, this letter, I think, that the Governor wrote
18 Senator Boxer may be instructive, because it really goes through
19 all of that.

20 SENATOR PETRIS: I'm not familiar with the letter. I
21 know there was some exchange there.

22 Well, was the Department the lead agency responsible
23 for preparing the EIR?

24 MR. GOULD: Yes.

25 SENATOR PETRIS: So it was in the EIR that this
26 projection was made?

27 MR. GOULD: I think, yes. I think it appeared in a
28 number of cases. It has been in the public arena, I believe,

1 since 1990. It was part of the application. It's been out
2 there as a number for sometime, so this was not a new number to
3 people who are looking at the site.

4 In fact, it had been one of the prime criticisms,
5 that it was going to hold 3,500 curies, and there was concern
6 about that.

7 SENATOR PETRIS: Now, another problem in connection
8 with that, there was some language crossed out of the 3448
9 report. I don't know where it was. I don't know whether it's
10 sitting on a bulletin board somewhere, it's not clear to me, but
11 it says:

12 "Internal departmental records
13 reveal that a chart showing this
14 information was prepared for inclusion in
15 the final EIR, but was crossed out with
16 the word 'replaced,'"
17 over it, by some unknown person in the Department.

18 Now first of all, let me tell you, I do not expect
19 that you would have any knowledge of that, because you're
20 sitting at the top of the heap at that time, and it could be
21 anybody, you know, from the top down to the very last level of
22 rank, okay? But it did happen, and it did have some impact.

23 So my question is: were you aware that this change
24 was made?

25 MR. GOULD: No.

26 SENATOR PETRIS: This is the first time you're
27 hearing of it?

28 MR. GOULD: This is the first I've heard of this

1 question.

2 SENATOR PETRIS: So obviously, you didn't authorize
3 it or approve it, since you didn't even know about it.

4 MR. GOULD: No, I did not.

5 SENATOR PETRIS: Do you have any recollection as to
6 any other role that you may have played? Did you, for example,
7 have an opportunity to review those reports yourself to examine
8 them as to the waste stream, and the volume, and how many
9 curies, and all that?

10 MR. GOULD: No, Senator.

11 In trying to run the Health and Welfare Agency, with
12 13 departments and a wide variety of programs, that's just not
13 something that I had the opportunity to do.

14 SENATOR PETRIS: Well, one of the reasons I bring
15 this up is that I didn't know anything about it before. It
16 should have been something that we were told about at the time.
17 Obviously, you didn't know it, but somebody in the Department
18 must have known, and it does have a bearing on the whole issue
19 that I don't want to get into, and that's the Ward Valley.

20 I think that if these sums are accurate projections
21 of what likely is going to happen, then everybody's going to get
22 pretty alarmed about it.

23 When we were looking at less than four-tenths of one
24 curie, then over to this other enormous amount --

25 MR. GOULD: Senator, let me -- if I wasn't clear
26 before, I just want to say that the four-tenths, the .45,
27 hundredths; is the Department estimate on the volume that will
28 occur.

1 SENATOR PETRIS: Yes.

2 MR. GOULD: So, they still believe that is a credible
3 estimate.

4 SENATOR PETRIS: I'm glad to hear that. I hope
5 that's the way it turns out.

6 But when we get the specter of this other thousands,
7 as you can see, it raises some question.

8 It also affects the credibility of whoever presented
9 this to you, whether it was done purposefully to mislead the
10 Committee that was concerned about it, because, you know, we had
11 several hearings and it went over a period of time, and there
12 was a lot of criticism from the outside.

13 So, it goes to the credibility of the whole
14 presentation, from the staff, or experts, or whoever they were.
15 So, I guess that will require a little further doing.

16 Do you have all the information now that you need to
17 check that out?

18 MR. GOULD: Yes. What I'd like to do is to work with
19 the Department of Health Services. I think they can be most
20 responsive; they have direct responsibility for the issues.

21 I will inform them and work with them to make sure
22 that they understand the issues you're concerned about.

23 SENATOR PETRIS: Yes.

24 That leads me to believe that maybe Secretary Gould
25 will need some help. If you're the boss, sitting on top, and
26 somebody down below pulls this caper, I don't expect you to be
27 on top of that and ferret it out immediately.

28 The only incentive that we have that we can see and

1 employ is that somebody higher up there in the scale is
2 watching: I notice that we've got an eye on you, and we want to
3 keep you honest, so to speak.

4 It leads me to think that maybe we can help by having
5 some kind of an oversight committee in the Legislature. I don't
6 mean the Rules Committee, but maybe a select committee to
7 oversee this, because the stakes are so high. That's the reason
8 we've been concerned all along.

9 I don't mean oversee Mr. Gould. I mean oversee the
10 Ward Valley hazards, and how they're doing, and who's doing
11 what. Perhaps we should consider that in the near future.

12 CHAIRMAN LOCKYER: I concur.

13 SENATOR PETRIS: I have one other subject that I
14 couldn't telegraph to you before because I didn't think of it.
15 I had forgotten. It's kind of a partisan thing, and when these
16 things happen, the party that objects has some bad reactions and
17 feelings.

18 This has to do with a memorandum in February of last
19 year from your Legislative Coordinator at that time, Mr.
20 Carrigan. Apparently, it's a written memorandum on legislative
21 coordination, policy on how to treat inquiries from Legislators,
22 and the protocol recommended by him.

23 I don't know whether this was actually adopted by you
24 or what, but this is all I know.

25 The protocol is, if you get a question from
26 Legislators, the protocol is as following: you answer
27 Republican Legislators first. I can understand that. If I were
28 a Democrat in office, I might give a little priority to the

1 Democrats and their inquiries, but it doesn't look too good.

2 The second is freshman Legislators; third is
3 important committee members; and fourth is others as time
4 permits, which would probably be me.

5 I don't like that. I don't think it's very good
6 policy.

7 Now, I'd like to check into that, and let us know
8 what you find out about that. Maybe you have a recollection
9 now?

10 MR. GOULD: I do, because it's something that I took
11 very seriously.

12 Unfortunately, I found out about that policy or
13 written document by Mr. Carrigan on Saturday morning, reading
14 the Sacramento Bee. I was not aware of that, but I take
15 responsibility because it was my agency. So, if that occurred,
16 I take responsibility for that.

17 But I immediately, upon seeing that, sent a letter to
18 Senator Roberti saying that was not my policy. I wanted to
19 inform him that we were going to treat all Members of the
20 Legislature the same. We have a responsibility to serve you
21 all.

22 There's a lot of information that you must have in
23 order to deliberate the issues and to make sound judgments, and
24 that we can best serve you by being straight forward, and being
25 honest, and giving you the information you need.

26 And so, we were not going to have any kind of
27 priority setting of that nature, and I so tried to set the
28 record straight.

1 I can get you a copy of that letter which was sent to
2 the Legislature as soon as I found out about it.

3 SENATOR PETRIS: So your current policy is totally
4 different from this suggested.

5 I probably wouldn't have gone into it, except it
6 triggered some memories in my mind. I had a lot of disputes
7 with Governor Reagan, who probably had the worst of the
8 stonewalling policies that I've seen here as Governor. He just
9 told his people: if the Legislature asks you, you don't answer,
10 period, even in committee, even though you're responsible for
11 that particular assignment; you don't know nothing. That's how
12 bad it was.

13 It was very frustrating to us as Legislators, and I
14 think it set back the harmonious process of government for quite
15 a while.

16 So, I see specters of this coming up, even though
17 this is last year.

18 So, I'm pleased that you clarified that, and you
19 immediately repudiated it, and that's not your present policy.
20 And I commend you for that.

21 It's tough enough for us to get communication, even
22 when we're all trying together.

23 And the reason I hesitated to go into it originally
24 is that my experience with you personally has been excellent.
25 Whenever I've called on you, you've come over to the office, or
26 we've talked about it on the phone, and you've put your people
27 to work to get the information that's needed. I think that's
28 the best way to go, and that's the way it should be.

1 I'm happy to say my experience with you has been just
2 that, so I'm very pleased.

3 But there's a massive number of people serving under
4 you, and sometimes they misinterpret signals. I have in mind
5 again when Governor Reagan became President, and one of his
6 underlings declassified or upgraded tomato catsup as a vegetable
7 to satisfy the requirements of Congress on nutritional programs
8 for poor kids who weren't getting any meals at home. They were
9 getting them at school. And it required a certain minimum
10 number of vegetables. I think we all remember that.

11 So, he just says, well, catsup is a vegetable. That
12 takes care of that.

13 And it turned out, when the Congress checked into it,
14 this person was not a mean or evil person who was trying to
15 undermine the program at the expense of the unfed children, or
16 underfed. He thought that's what the boss wanted. And yet, he
17 had never talked to the boss, meaning the President. Just from
18 public utterances, the image that he had of the President, hell,
19 this is the way the President really wants to go, so we'll do
20 it.

21 So, I'm a little sensitive about how the signals go
22 out, and how clear they are.

23 So you said it very clear in this letter to Senator
24 Roberti, and I think that takes care of that.

25 Thank you.

26 MR. GOULD: You bet.

27 SENATOR PETRIS: Thank you, Mr. Chairman.

28 CHAIRMAN LOCKYER: Other questions or comments?

1 Mr. Gould I would just mention again what Senator
2 Petris concluded with, that I've always appreciated the
3 excellent relationship and quick responsiveness of you
4 personally and your office.

5 There are, obviously, some Senators that are less
6 than happy, and while I think that the confirmation will be
7 concluded this week, so there won't be that hammer, they'll
8 figure out some other way to make your life miserable if there
9 aren't complete follow through on some of the matters we
10 discussed earlier.

11 What's the pleasure of the Committee?

12 SENATOR BEVERLY: Are you ready to act?

13 CHAIRMAN LOCKYER: Yes.

14 SENATOR BEVERLY: Move approval of the confirmation.

15 CHAIRMAN LOCKYER: We have a motion. Call the roll.

16 SECRETARY WEBB: Senator Ayala.

17 SENATOR AYALA: Aye.

18 SECRETARY WEBB: Ayala Aye. Senator Beverly.

19 SENATOR BEVERLY: Aye.

20 SECRETARY WEBB: Beverly Aye. Senator Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Petris Aye. Senator Craven.

23 Senator Lockyer.

24 CHAIRMAN LOCKYER: Aye.

25 SECRETARY WEBB: Four to zero.

26 SENATOR BEVERLY: Would you leave the roll open for
27 Senator Craven?

28 CHAIRMAN LOCKYER: Yes, we'll leave it on call so

1 that Senator Craven can vote.

2 MR. GOULD: Thank you very much.

3 [Thereafter, the roll was opened
4 and Senator Craven voted in favor
5 of the Gould confirmation; the
6 final Committee vote was 5-0.]
7

8 [Thereupon this portion of the
9 Senate Rules Committee hearing
10 was terminated at approximately
11 2:47 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing partial transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand
this 11th day of July, 1994.


EVELYN J. MIZAK
Shorthand Reporter

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June 28, 1994

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The Honorable Bill Lockyer
President pro Tempore
California State Senate
State Capitol, Room 205
Sacramento, California 95814

Dear Senator Lockyer:

It was an honor to appear before the Senate Rules Committee Monday to discuss the confirmation of my appointment to the Board of Trustees of the California State University. I appreciated the candor and thoroughness of the hearing, and enjoyed the give and take of the proceedings.

As you, Senator Petris and I discussed after the hearing, this letter serves to highlight some of the issues that I have been involved in as a Trustee that will illustrate my independence and style, but most importantly, the conviction that my role is to view the students first and foremost as the primary consumer in the California State University.

You will no doubt recall that my service on the Board of Trustees has actually spanned two different periods of time. My first appointment came in 1989, and expired in 1992. I was subsequently reappointed after about a year and a half in 1993, and it is the confirmation of that appointment that is before you at this time.

In my first year on the Board, the controversy regarding former Chancellor W. Ann Reynolds erupted, and involved the inappropriate manipulation of the procurement laws for the purchase of several automobiles so that their acquisition would not have to become public or go to competitive bid, and the substantial increase in executive salaries that was orchestrated in closed session amongst the Board leadership without the consent or knowledge of the full Board. I objected strenuously and publicly about these actions, and eventually chaired the special personnel committee of the Board that investigated the circumstances surrounding these events, and lead to the subsequent resignation of Chancellor Reynolds in 1990 and the appointment of Interim Chancellor Ellis McCune. In addition, I supported the revocation of the executive pay raises that had been approved in private, and pushed for the process we now use that provides for compensation increases to be the subject of lengthy, and public, discussion.

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J. Gary Shansby

Michael D. Stennis

Anthony M. Vitti

Senator Lockyer
June 28, 1994
Page Two

Later, I chaired the search committee that resulted in the hiring of Chancellor Barry Munitz, and fought for his appointment in the face of political opposition that had nothing to do with his qualifications for the office. There is broad agreement, I think, that my role in exposing the circumstances of the events that lead to the resignation of Dr. Reynolds, the appointment of Dr. McCune, and the search for and appointment of Dr. Munitz clearly establish my credentials as an independent, outspoken, and strong advocate on behalf of the students and taxpayers of California. This appointment made clear that under my leadership the board had become active, involved, and challenging, a tone that continues to this day.

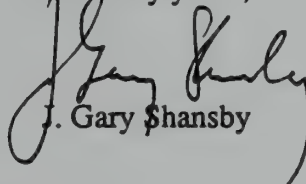
Even though I had the opportunity to move up from my elected Vice Chair position to serve as Chair of the Board, I chose not to accept that role, primarily because I wanted to maintain my independence, particularly during the difficult times that we were going through - both in the leadership of the California State University, and in the growing fiscal crisis that was just beginning to manifest itself in the early 1990's.

A review of Trustee records will demonstrate that I have been an active, open, and independent Trustee, not influenced by political, administrative, or Trustee manipulation. I am proud of the role that I have played, and honored that I have been given the opportunity to return to the service of the State of California as a member of the Board of Trustees of the California State University. It is my hope that I will once again receive the support of the Senate for my confirmation to a second term on the Board.

Finally, and as I mentioned during my confirmation hearing, I have served in trustee-level roles for over 20 years in California - as past chair of the Commission for the Review of the Master Plan for Higher Education and in governing board positions at Saint Mary's College, the University of San Francisco, and the University of California, Berkeley, Foundation. I believe that no commitment can be more important than our strong commitment to preserving high quality education for our citizens.

If I may be any further service to you or provide any additional information, please do not hesitate to contact me.

Sincerely yours,



J. Gary Shansby

JGS:jc

cc: Members, Senate Committee on Rules

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18 MONDAY, AUGUST 8, 1994
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22 2:32 P.M.
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25 Reported by:
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27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR WILLIAM CRAVEN, Vice Chair

SENATOR RUBEN AYALA

SENATOR ROBERT BEVERLY

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ARTHUR CALDERON, Warden
California State Prison at San Quentin

FRANK R. SEARCY, President
Chicano Correctional Workers Association

ANITA PEREZ, President, San Quentin Chapter
Chicano Correctional Workers Association

DAVID MARTIN, President, Sacramento-Folsom Chapter
Chicano Correctional Workers Association

JIM WARE
Association of Black Correctional Workers

MARION J. WOODS, Sacramento Branch
National Association for the Advancement of
Colored People

JOHN R. COVINGTON, M.D., Chief Medical Officer
California Rehabilitation Center

FELIPE D. RUBIO, Correctional Lieutenant
Chicanos for Justice
California Rehabilitation Center

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Chicanos for Justice
CIW

DAVE TRISTAN, Deputy Director
Institutions Division
California Department of Corrections

RICHARD HOWELL, Correctional Counselor II
California Rehabilitation Center

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Department of Social Services

OVARIA SMITH
Society of California Care Home Operators
Los Angeles

GEORGE K. WEBB, Elderly Care Provider
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Oroville

DERRELL KELCH, Vice President, Public Policy
California Association of Homes for the Aging

ELSA FUCANAN
Fucanan Care Homes
Danville

WILLIE HAUSEY
Society of California Care Operators

ERLINDA LUNA, Administrator
Corinthian Garden B&C
Oroville

NIMIA RENOVILLA
Home Care Provider for Handicapped Children
Concord

KINGSTON PRUNTY, Warden
California State Prison at Calipatria

GEORGE MOSQUEDA, Program Administrator
Department of Corrections

VINCE NALEWAJA, Father of Michael Nalewaja
Correctional Officer at Calipatria State Prison

HECTOR LOZANO
Jamestown Chapter
Chicano Correctional Workers Association

APPEARANCES (Continued)

DUNCAN FALLON
Calipatria State Prison

RICHARD BAILEY, President
Calipatria State Prison Chapter
CSEA

PATRICIA BIAGINI, Co-Chairperson
Calipatria State Prison Women's Liaison Council

DON NOVEY
California Correctional Peace Officers Association

DAVID MOSCHETTI, Chapter President, Calipatria
California Correctional Peace Officers Association

LANCE CORCORAN, Chapter President, Susanville
California Correctional Peace Officers Association

DEBRA DEXTER, Assistant Chairperson
Calipatria-El Centro Chapter
Association of Black Correctional Workers

DON ROTHCHILD, Correctional Sergeant
Calipatria State Prison

CARL CRAMER, Food Manager
Calipatria State Prison

GLORIA ROSARIO, Correctional Officer
California State Prison at Sacramento

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P-R-O-C-E-E-D-I-N-G-S

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CHAIRMAN LOCKYER: Gubernatorial appointees, and first is Warden Calderon.

Good afternoon, sir.

MR. CALDERON: Good afternoon.

CHAIRMAN LOCKYER: Tell us about yourself and your career, and why you like being Warden and want to stay there.

MR. CALDERON: Thank you, Mr. Chairman, Committee Members.

First of all, thank you for allowing me to appear before you today.

I've been with the Department approximately 28 years. I think it was around August of last year I was first approached with the idea of me possibly transferring to San Quentin. At that time I didn't give an answer right away. What I did say is, I'll get back to you.

There was a lot of things that were going through my mind: did I really want to go through this confirmation process again, and did I really want to move to another institution since I had already been a warden for almost four years.

The reason I decided to take the job at San Quentin is because this is my third time that I've worked at San Quentin over my 28 years. I came up through the ranks. I guess I fell in love with San Quentin in the early '70s when I worked there, and once you've worked at San Quentin, you never forget the place. Even with its many problems that it had at the time, I felt that I could do some good for the old place, and that I

1 felt that my style of management would lend itself to San
2 Quentin.

3 And I just feel that I still have quite a few years
4 left in this Department, and I just want to do what I can to
5 work with the folks at San Quentin and to work with the
6 Department of Corrections.

7 CHAIRMAN LOCKYER: Is there anyone present that would
8 wish to comment, first of all, either for or opposed? Please.

9 MR. SEARCY: Good afternoon, Mr. Chairman and Members
10 of the Committee.

11 I am Frank Searcy, Chicano Correctional Workers
12 Association President.

13 I'm here to offer our support for Mr. Calderon as
14 Warden at San Quentin State Prison. We have known him to be a
15 very dedicated individual, very dedicated employee. As he has
16 stated, he has worked at San Quentin for several times over the
17 years.

18 We as an Association strongly support him, and I
19 don't know of any reason why we would not support him.

20 However, unfortunately, there are others that may be
21 some opposed to this confirmation. We offer that as Warden, and
22 Warden at where he is at now, that possibly he may have had some
23 administrative difficulties. However, on the other hand, what
24 administrator doesn't have problems? There are situations that,
25 as we go along in our administrative duties, there are times
26 when you have to undertake some discipline. And at times, that
27 is where it's distasteful to the individuals involved.

28 At this time also, at times we know that in our time,

1 in our age right now, that there are situations that are very
2 critical. And I don't think there's anyone that would ever
3 advocate more than I the women's right and the sexual harassment
4 in the workplace.

5 But at the same time, I'm not minimizing that
6 situation or those situations, I believe that right now, the
7 situation has reached a level that at times, almost any look,
8 any thoughts, any word can be mistaken, misconstrued, to be
9 something that it's not. Unfortunately, I think even right now,
10 probably someone is putting some thoughts and some complaint
11 about me about some thought I may have in my mind along those
12 lines.

13 The point I'm trying to make, sir, is that it's very
14 simple, it's very easy, to get caught up in these type of
15 situations. However, on the other hand, like I mentioned at the
16 beginning, our Association strongly endorses and offers our
17 support to Mr. Calderon as Warden at San Quentin State Prison.

18 Thank you.

19 CHAIRMAN LOCKYER: Thank you, sir.

20 Next.

21 MS. PEREZ: My name is Anita Perez. I am
22 representing the San Quentin Chapter of the Chicano Correctional
23 Workers Association.

24 I thank you for allowing me to speak on behalf of
25 Warden Art Calderon.

26 I have known Mr. Calderon for approximately 15 years.
27 It was during this time that I have observed his decisive
28 decision making skills and exceptional leadership qualities that

1 contribute to the professional integrity of the California
2 Department of Corrections. I've had the opportunity to work
3 with Mr. Calderon on affirmative action issues in which his
4 leadership and his expertise provided a plan of action to
5 improve those areas of concern. His ability to work with
6 concerned groups and address the issues of impartiality has
7 encouraged favorable results.

8 As a female working in the Department of Corrections,
9 I appreciate Mr. Calderon's tenacity in supporting women in
10 Corrections. Mr. Calderon has afforded women the opportunity of
11 training and development which has prepared us for the
12 leadership responsibilities while creating a distinct precedence
13 of an example for others to follow in the workforce throughout
14 the Department of Corrections.

15 There are those here in this room who may disagree
16 with the aforementioned. However, as with all conscientious
17 leaders, there are elements of adversity which seem necessary
18 preparation for great duties. I believe personal indifference
19 to the issues have clouded the reasoning and the real issues,
20 and the real issue is that Mr. Calderon is supported by CCWA,
21 and additionally is supported steadfastly by the San Quentin
22 Chapter.

23 I have seen Mr. Calderon's long-standing support of
24 the Hispanics. I have seen also Mr. Calderon's awareness of
25 sensitivity to all ethnic groups.

26 Therefore, those in this room who attempt to dishonor
27 Mr. Calderon here at this hearing, I believe do so out of
28 personal vindictive reasons. They do not represent CCWA, nor do



1 they represent the Hispanics in the California Department of
2 Corrections.

3 I encourage each of you in this Committee to look at
4 the congruency of performance of personal integrity of Mr. Art
5 Calderon. This Committee will find a leader devoted to the safe
6 working environment of his employees, who promotes and
7 encourages professional integrity among his constituency.

8 The confirmation of Mr. Art Calderon will clearly
9 announce a message to all, and that message is: Mr. Calderon is
10 a distinguished administrator who applies ethical principles of
11 professionalism, and an employee who is a servant of the
12 California -- people of California.

13 Thank you.

14 CHAIRMAN LOCKYER: Thank you.

15 Next, please.

16 MR. MARTIN: My name is Dave Martin, and I am the
17 President of the Sacramento-Folsom Chapter of CCWA, the Chicano
18 Correctional Workers Association.

19 I have known Art, Mr. Calderon, for 24 years. As a
20 prior administrator with the Department of Corrections, I worked
21 with him at San Quentin when we were both administrators. His
22 style of management is firm but fair.

23 I've been on many conferences out of state, socially,
24 with him, and with -- for Correctional conferences, and he has
25 always handled himself as a gentleman.

26 I've known his family. His family is very
27 God-fearing.

28 And the only thing that I can say is that his

1 management style, being firm and fair, he has always treated all
2 minorities in a fair manner.

3 So, I urge the Committee to vote for Art, to confirm
4 him for the Warden of San Quentin based on his management style
5 and the years of dedicated service that he has given to the
6 Department of Corrections.

7 Thank you.

8 CHAIRMAN LOCKYER: Thank you, sir.

9 Next.

10 MR. WARE: Thank you, Mr. Chairman and Members. My
11 name is Jim Ware I'm here on behalf of the Association of Black
12 Correctional Workers.

13 You have before you a letter which outlines our
14 strong support for Mr. Calderon. We see him as a strong
15 advocate of justice and fair play.

16 CHAIRMAN LOCKYER: Thank you, sir.

17 MR. WOODS: Mr. Chairman, I'm Marion Woods,
18 representing the Sacramento branch of the NAACP.

19 We have found Mr. Calderon to be a competent, able,
20 professional administrator, and also effective and equitable in
21 his administration.

22 We urge confirmation.

23 CHAIRMAN LOCKYER: Thank you.

24 DR. COVINGTON: Mr. Chairman, I'm Dr. John Covington,
25 the Chief Medical Officer at the California Rehabilitation
26 Center, where I worked under the direction of Art Calderon.

27 I'm here to support his nomination. I hired into the
28 Department October 1st, 1991. Since that time, I've had a

1 chance to work with four or five different wardens. I was on
2 special assignment at Vacaville as Chief Deputy Warden for
3 Clinical Affairs for three months; I've been assigned to Wasco
4 State Prison, to Centinela State Prison, and just recently I
5 returned from six weeks at Calipatria State Prison. So, I have
6 interacted with several wardens.

7 I found Mr. Calderon to be extremely fair, to be very
8 understanding, and in our meetings, he always let others express
9 their opinions. Not once in my time with Art Calderon did Art
10 ever say to me, "I'm the Warden; this is how it's going to be."
11 He always asked me, "What is your opinion? I'm not a doctor. I
12 trust you to run things."

13 I've even asked him for things that would be more
14 psychological than practical. He always agreed. For example,
15 we were given the orders last year to TB test 4,800 inmates in
16 our prison. Mr. Calderon said to me, "What do you want?"

17 I said, "I need a show of strength because my staff
18 in Medical are afraid to go into the housing dorms."

19 Not only did he have his staff there, he himself
20 walked around that day, with his AWA's, as a show of force. And
21 as a result, we tested those inmates in two and a half hours
22 without any difficulty.

23 I strongly support Mr. Calderon as a man of
24 integrity, a gentleman, and a pleasure to work with.

25 Thank you.

26 CHAIRMAN LOCKYER: Before you leave, sir, there's a
27 letter, and I don't know if he's present, Dr. Arjona had some
28 critical things to suggest.

1 Have you ever spoken with him about this?

2 DR. COVINGTON: Yes. Dr. Arjona is one of the staff
3 physicians who worked with me. I spoke with him on Thursday
4 about any problem he may have had.

5 He told me that when he first started with CRC, he
6 thought that he was going to be invited to the Warden's office
7 to meet the Warden, to welcome him to join CRC. Instead, he was
8 criticized by the Warden for his failure to do something, which
9 made him very angry.

10 That's what he told me the problem was. That was
11 about three years ago.

12 CHAIRMAN LOCKYER: Do you think that's the reason for
13 expressing opposition today?

14 DR. COVINGTON: He told me that he was angry about it
15 because he felt that he was the doctor, and he was just the
16 warden, and a warden cannot tell a doctor what to do.

17 So, I think it's more of a cultural thing than a real
18 insult. He was expecting to be welcomed, and he was criticized.

19 CHAIRMAN LOCKYER: Thank you, Doctor.

20 Are there others present? Yes, either support or
21 opposition would be appropriate now.

22 Senator Ayala.

23 SENATOR AYALA: I have a question for Mr. Calderon.

24 Mr. Calderon, San Quentin is a Class IV holding
25 facility. We have a problem with Class I and II facilities
26 having a drug problem, illegal drug use.

27 Do you have any problems at San Quentin with illegal
28 use of drugs within the inmates?

1 MR. CALDERON: Senator, I have a problem with any
2 institution where there's drugs.

3 The reality is --

4 SENATOR AYALA: You what?

5 MR. CALDERON: I have a problem with any institution
6 that has drugs within the prison.

7 The reality is that there is some of that that goes
8 on, unfortunately, in every institution. We constantly remind
9 ourselves of the need to be more security-minded, the need to
10 impress upon the staff the importance of searching inmates
11 coming in, going out, going to different places, the need to be
12 vigilant and to be aware.

13 I am very concerned about that problem.

14 SENATOR AYALA: Are you telling me there's no way to
15 control it completely, even though they're in there for
16 whatever illegal use they've been involved in, that there's no
17 way to control the drug traffic in a state prison?

18 MR. CALDERON: Senator, I wish I had the answer to
19 that. I wish I could tell you that I had the answer of how to
20 completely, 100 percent, stop the introduction of narcotics into
21 the institution. I don't have the answer to that.

22 There's a lot of things that we can do, and that we
23 as a Department have done to try to minimize or reduce the
24 amount of contraband coming into the institution, but to sit
25 here and tell you that I know the answer to stop it 100 percent,
26 I just don't --

27 SENATOR AYALA: I can see it in Class I and II,
28 perhaps, because they're more lax in their security. At least

1 that's what I've seen at CIM in Chino, but a Class IV, that's an
2 enclosed facility from all directions. I don't understand why
3 there'd be any abuse in that facility.

4 MR. CALDERON: Senator, in reality, San Quentin is a
5 Level II institution. We have several missions. It's a Level
6 II and --

7 SENATOR AYALA: San Quentin is a Level II?

8 MR. CALDERON: Yes, sir.

9 SENATOR AYALA: I thought it was Level IV.

10 MR. CALDERON: It used to be a Level IV. Some years
11 ago, we went from a Level IV to a Level II.

12 But that doesn't matter. In my opinion, with 28
13 years of experience, I don't think we ought to have any less
14 security when it comes to that in a Level I than in a Level IV.
15 As far as I'm concerned, there should be no differences when it
16 comes to that.

17 SENATOR AYALA: Is there anything you propose to do
18 to strengthen that?

19 MR. CALDERON: Well, we as a Department over the
20 years, of course, we've tried some very innovative and I thought
21 they were very worthwhile efforts; however, the courts thought
22 otherwise.

23 For example, we introduced the use of dogs, you know,
24 the sniffing kinds of dogs to sniff out narcotics. I thought we
25 were being pretty successful. However, there was a court order
26 that was very strict with us in terms of what we could or could
27 not do.

28 We also, we have a technology transfer committee in

1 our Department that is looking at different innovative ways of
2 doing that.

3 I think there's no substitute for our officers being
4 alert, being very vigilant, and doing the kinds of things that
5 custodial people ought to be doing.

6 SENATOR AYALA: Thank you.

7 CHAIRMAN LOCKYER: Additional testimony? Yes, sir.

8 MR. RUBIO: My name is Felipe Rubio. I'm a
9 correctional lieutenant at the California Rehabilitation Center
10 at Norco, and have been so for 23 years come this October.

11 And I'm here to tell you, first of all, I just had a
12 heart attack a few weeks ago, and I'm here because -- against
13 the doctor's orders, because I feel it is so important that
14 Mr. Calderon not be confirmed as Warden at San Quentin.

15 And I agree with the individuals prior that he should
16 be judged on his management style and on his record, which I
17 think he has displayed his inability to run an institution
18 fairly, to run it financially.

19 I think that due to his prejudice, personal
20 discrimination, not necessarily racial but personal, not only to
21 me but to numerous individuals that he's dealt with.

22 Some of these cases are, he brought up individuals
23 for termination. And as far as I know, all of the individuals
24 that were clearly caught with the goods, such as having sex with
25 inmates, bringing in narcotics, were terminated and should have
26 been.

27 However, Warden Calderon and also James Gomez, the
28 Director of Corrections, Joe Sandoval, and even the Governor

1 were well aware of situations where the individuals were not not
2 guilty, and clearly not guilty, to a reasonable person. And all
3 these cases were overturned by the State Personnel Board, and
4 these individuals were returned to work.

5 Yes, his management style, one individual was
6 returned, over \$100,000 was paid to him. He got his job back.
7 Another individual received over \$30,000 and got his job back.
8 Another individual got over \$45,000 back and got his job back.

9 Other decisions of less -- involving money were also
10 returned to their jobs. And this was done with the Warden
11 knowing that these individuals were not guilty.

12 In one case -- you say about that he has integrity,
13 these people prior. Well, I have seen this man get off work,
14 get in a state vehicle, and go to various nightclubs and drink,
15 and get back in that vehicle, and go wherever he goes. I have
16 personally seen this.

17 I know that this individual -- first of all, this
18 hearing here, it's great. However, it's very difficult for
19 individuals to get off work and to come here. There's one
20 individual that wanted to be here to tell you people that he
21 came home twice to catch Art Calderon at his home, drinking beer
22 with his wife, on two, at least two separate occasions, and that
23 Art Calderon fired the sergeant. And this is one of the
24 sergeants that was -- won his case and was returned back to work
25 with full pay and compensation.

26 Is this the type of warden that you want? I don't
27 think so.

28 As for discrimination, this individual has told me

1 and other individuals that hell would freeze over before I would
2 get an opportunity, and other individuals would get
3 opportunities, as acting captain. Not until my last performance
4 report did I ever receive one that was less than outstanding.

5 And yet, I've been on the Captain's List for
6 approximately six years, and never once have I been allowed to
7 be acting captain. People that weren't on the Captain's List
8 were allowed to be acting captain, and yet I was not.

9 As investigator in 1984 and 1985, I was investigator,
10 and never did I lose a case, not one. And yet, during Art
11 Calderon's time as Warden at CRC was I ever called on for
12 special assignment in regards to investigations. Yet clearly, I
13 was the best that has ever been at CRC, not because I'm
14 bragging, but because of the actual performance that can be
15 shown in black and white.

16 As for his affirmative action, I had to speak to him
17 numerous times in regards to the hiring of Mexican females as
18 sergeants and lieutenant. When he left, as I recall, there was
19 one Mexican female sergeant, and no Mexican lieutenants. This
20 is the type of commitment he has to affirmative action.

21 Three weeks ago, my son was killed in an accident
22 involving a weapon. And when we buried him three weeks ago, I
23 wore captain's bars, although I'm not a captain. And I did that
24 because it became a joke, you see, because I have interviewed
25 over 20 times for captain. And my son, he used to ask me, he
26 says, you know, how come you go to these interviews? And I
27 would say, well -- and I would say, well, I've got a chance.

28 I knew I really didn't, but you see, the frustration

1 that is caused by wardens like Calderon, and he's not alone, but
2 my concern right now is somebody like this. When I didn't make
3 captain, and now to hell with captain because I would never
4 accept it now.

5 The last time that I interviewed at CRC, my son asked
6 me, and I can see him clearly, "So, what are you doing?" I
7 said, "Well, I'm going to the captain's interview." He said,
8 "But Dad, why do you go?" And then he was going to explain, and
9 he couldn't, and he left.

10 Well, I went to that interview. Same results,
11 20-something times.

12 CHAIRMAN LOCKYER: Who conducts those interviews?

13 MR. RUBIO: The wardens do.

14 CHAIRMAN LOCKYER: So it's the warden and --

15 MR. RUBIO: The wardens and their representatives.

16 But the thing is, I wore those captain's bars to my
17 son's funeral as a final attempt to show people like Calderon,
18 and other individuals, that when they screw with somebody's
19 life, somebody like myself, like Tafolla, like so many other
20 people, they don't just screw with that person like myself.
21 They hurt my son. They hurt my family, and they just go about
22 going their little parties and drinking.

23 Calderon has cussed at me numerous times: F-this,
24 and F-you, and do this, and do that.

25 Calderon is a liar. He is a man without integrity.
26 And there's so many other things that this man has done, and
27 yeah, people can sweep it under the table, but I assure you that
28 I am not lying.

1 Remember what I told you in regards to him going to
2 the house of the sergeant and drinking at this person's house
3 without him being there, without him being invited.

4 And this man couldn't make it to this hearing
5 today.

6 CHAIRMAN LOCKYER: Lieutenant, it's obviously a
7 matter about which you would have intense feelings, to be
8 willing to make an appearance with a superior being interviewed
9 by this panel.

10 You know, obviously, that we have very little
11 investigative capacity but that others do. I think there were
12 investigations with respect to allegations of sexual harassment,
13 racial discrimination, and maybe mishandling of funds.

14 Are you familiar with those investigations having
15 been done and their results?

16 MR. RUBIO: Yes, sir.

17 When this sergeant that was fired on sexual
18 harassment, he was immediately terminated from that institution.

19 When Calderon was charged with sexual harassment, he
20 stayed there and intimidated a lot of people.

21 People that conducted the investigation, they came
22 down from SSU to not only interview him, or in regards to him,
23 but to Castro, were friends of these individuals.

24 When is the Department of Corrections going to assign
25 people from outside agencies, that aren't associated with these
26 guys? Twenty-eight years in the Department, very commendable.

27 But how -- when I called, and I wanted to be on the
28 panel to give my side of the story, and I forget her name but

1 from Blythe, she wouldn't even interview me.

2 I gave all my paperwork. I was assured by Senator
3 Presley that he would make sure that you people got the
4 paperwork.

5 This is paperwork that dealt back to 1989, I believe,
6 1990, years before I got, as some people suggest, it's a
7 personal thing because I got a bad performance report.

8 I don't give a damn about the performance report.
9 I'm on my way out now.

10 CHAIRMAN LOCKYER: How many years do you have in?

11 MR. RUBIO: This October will be 23 years.

12 And all I can say is that I gave the paperwork to
13 Senator Presley. I received a call from someone that said they
14 were doing an investigation for this Committee, and I gave them
15 some information.

16 And again, my last statements to you people,
17 Calderon is a liar, and has not integrity, and it would be a
18 travesty if you people confirm him.

19 Thanks.

20 CHAIRMAN LOCKYER: Thank you, sir.

21 Next.

22 MR. TAFOLLA: Good afternoon, Mr. Chairman. My name
23 is Roberto Tafolla.

24 I met Mr. Calderon in November of 1989, after making
25 an appointment through his secretary when he was Chief Deputy
26 Warden at the California Rehabilitation Center.

27 The reason I met with Mr. Calderon was very specific:
28 to inform him of the discriminatory practices that his

1 predecessors -- the prior Chief Deputy Warden and the Warden
2 that was there before.

3 I made that appointment. I also informed him that I
4 was in the program administrator list, and I was reachable, and
5 I would like to have a chance. And I would like to see, as he
6 was coming in as the new administrator, a new management style
7 system.

8 Basically, management style system in our prisons is
9 that if you're friendly with the wardens, if you're friendly
10 with administrators, you're in. If you're not, no matter how
11 hard you work, no matter how, you know, how credible your
12 performance of your assigned duties are, that doesn't mean
13 anything to those individuals.

14 After listening to Lieutenant Rubio, there's very
15 little things to say, other than, number one, in 1989 through
16 1993, I believe, the end of '93, when Mr. Calderon was
17 transferred to San Quentin as requested, Mr. Calderon's
18 management style in dealing with his subordinates, specifically
19 myself, it's a management style of intimidation, of
20 disrespectful, and of using verbal language that -- that
21 degrades a human being.

22 When your superior tells you right in your face,
23 "Well, if you don't tell me who told you that, well, you know,
24 it appears that you're not acting like a man."

25 After putting on a community function for the Cinco
26 de Mayo, which it was a success in that institution, and trying
27 to talk to him to see if he was going to be present there,
28 because the community people were going to present him with a

1 present, he comes up off the wall, "Well, probably -- it
2 probably will be a pile of shit."

3 You know, this is the type -- this is the type of
4 verbal behavior that a superior uses in the daily operation of
5 his facility.

6 The whole concern is, if we aren't responsible for
7 maintaining the safety of the public, all you need to look at is
8 from 1989 to when he left, the record of escapees at that
9 institution.

10 CHAIRMAN LOCKYER: What would a warden do or not do
11 that would have an impact on the number of escapees?

12 MR. TAFOLLA: By making sure that if a -- if a
13 position is assigned, and the State of California puts the money
14 there to guard that tower, to make sure that that tower has that
15 staff member there. That's one thing.

16 The second thing is to make sure that his subordinate
17 staff carry out the custodial duties that we are required to do.

18 But again, the most important thing in terms of my 19
19 years' experience with the Department of Corrections is that if
20 a warden is not sincere and responsive to the needs of the
21 staff, the inmates, and of the public, then you're going to have
22 problems, you know.

23 In terms of all the eloquent recommendations of the
24 people that came before us, I don't have any problem with that.
25 My only concern is that you can look at the record of the
26 California Rehabilitation since Mr. Calderon left it. You can
27 look at the record in terms of litigation, in terms of, you
28 know, complaints, and legal issues that Mr. Calderon and his

1 administration has gone through.

2 So, thank you for the time allowed.

3 CHAIRMAN LOCKYER: Yes, sir.

4 I guess there's some others that wish to comment.

5 Thank you, gentlemen.

6 MR. TRISTAN: Mr. Chairman, Members of the Committee,
7 my name is David Tristan. I'm the Deputy Director for
8 Institution Division for the Department of Corrections. I'm
9 responsible for all the prisons and camps in the State of
10 California under the direction of Jim Gomez and Mr. Denninger,
11 the Director and Chief Deputy Director.

12 I'd like to just take a moment of your time and try
13 to address a few of the issues that were raised here by these
14 two gentlemen.

15 The first issue that I noted that they raised a
16 concern on was fiscal management. And I would just like to
17 respond that from my perspective over the years that I have been
18 the Deputy Director, Warden Calderon and his staff have done an
19 excellent job of managing the fiscal resources at that
20 institution.

21 The Department has faced several years of budget
22 cuts. Each year, the Warden and his staff responded to those
23 cuts, and they were able to safely operate that institution
24 without any significant incidents that I'm aware of.

25 There was a recent escape at the institution. There
26 was an investigation conducted, and I think that the results of
27 that -- and I'll let the Warden respond to those specific issues
28 -- but I do think that there was found to be some negligence on

1 the part of the officer that was in that tower at the time.

2 However, other than that, I cannot recall any
3 incident of any significance at that institution, in spite of
4 the Warden's just constant attempts to manage with the budget
5 in the operation of the institution.

6 In terms of the State Personnel Board actions that
7 were spoken to, I don't know of the specific cases because no
8 names were mentioned. It's probably more appropriate that names
9 were not mentioned.

10 However, in every single adverse action, our process
11 is that the Warden and his staff do the investigation. They
12 recommend the level of penalty. It's sent up to our
13 headquarters, where it's reviewed by the Regional
14 Administrator, our personnel office, myself. If it's a serious
15 issue, such as termination, it goes all the way to the Chief
16 Deputy Director and the Director for review.

17 Sometimes we are overruled by the State Personnel
18 Board; sometimes we're overruled by the court, but I think that
19 those are just avenues of redress that every individual has, and
20 that they're entitled to. And if someone has a different
21 opinion or a finding, then I believe that that's the way that
22 the system is set up.

23 In terms of the issue that was addressed relative to
24 sexual harassment, the state vehicle, and some of those
25 inappropriate use of the state vehicle, all of these issues have
26 been investigated. And we did not find any finding of fault on
27 the part of Warden Calderon. I do not recall the specific
28 details because I have not reviewed those investigations in some

1 time.

2 However, the investigators conducting these
3 investigations do not work for my division. They are a
4 separate arm within the Department of Corrections that work for
5 the Chief Deputy Director and the Director. Whatever findings
6 they find, we will take action.

7 In my almost six years being in Headquarters, I have
8 either taken action, recommended, or personally served notice to
9 about -- I've almost lost count -- but about 17 Associate
10 Wardens, Chief Deputy Wardens, or Wardens that I have removed or
11 recommended to remove with cause. So, the Department is not
12 adverse to taking action against administrators, but we do
13 require that there be a certain level of proof before we take
14 action against anyone.

15 In terms of affirmative action, we constantly review
16 affirmative action. And my recollection of the affirmative
17 actions at CRC is that they were excellent, both in terms of
18 minorities and women at all levels.

19 And I believe that in terms of my responsibility in
20 terms of the oversight and management of the Department, of the
21 Institutions Division within the Department of Corrections, that
22 Warden Calderon has done an outstanding job.

23 SENATOR PETRIS: May I ask, Mr. Chairman?

24 CHAIRMAN LOCKYER: Senator Petris.

25 SENATOR PETRIS: On sexual harassment, you say you
26 have to have proof.

27 What did those investigations show? Did they
28 interview the persons who complained about it and found that

1 those persons were lying? What was the problem?

2 MR. TRISTAN: In my recollection of the
3 investigations, Senator, is that -- well, in terms of the
4 process, we normally team up staff from affirmative action who
5 are trained EEO investigators and someone outside of -- they're
6 outside of my division, they work for a separate division.
7 Sometimes we pair up also a trained investigator out of our
8 Special Services Unit, and they go out and interview the people
9 that have complained, witnesses. They also interview the person
10 who's been accused of these improprieties. And then based upon
11 all of that, then they come up with their findings.

12 SENATOR PETRIS: Have they ever checked out Folsom
13 for similar complaints in your time, in your present capacity?

14 MR. TRISTAN: During my tenure as Deputy Director, I
15 either asked for permission or sent three separate investigative
16 teams out to Folsom Prison over a period of about three years.

17 And one of the reasons that I kept sending teams back
18 in was because the first time, the investigators came back, and
19 this is specific to Folsom, and they advised me that they felt
20 that something was wrong but they couldn't get to the bottom of
21 it.

22 The second team of investigators said the same thing.

23 The third team of investigators, I asked them to go
24 in there and stay as long as they needed to, to find whatever
25 improprieties there might be, regardless of the level. And at
26 that point, they stayed there, I think, if I remember correctly,
27 for about four to four and a half months. And at the end of
28 that time, they came up with some findings, and then we took

1 action against the individuals that there were some findings
2 against.

3 SENATOR PETRIS: What kind of action?

4 MR. TRISTAN: I think there was one termination and
5 several demotions, severe demotions.

6 SENATOR PETRIS: The reason I asked about Folsom is
7 that a few years, we had a very, very bad problem there, and we
8 had a lot of employees, women, who were being harassed by fellow
9 employees. The male guards were oppressing the female guards.

10 And I have never forgotten that. And it takes a lot
11 of guts for an employee to come here and testify against the
12 boss, whether it's the immediate one or the one way up on the
13 top, all the way up and down the ladder.

14 Now, these complaints had been made at Folsom for a
15 long time. Nothing ever happened.

16 I had the impression that in a lot of the prison
17 institutions, there's still an old boys network, and if you have
18 a complaint, you just can't crack through that network.

19 Now we're hearing the same thing here. It seems that
20 in all the reviews that we make here for the purposes of
21 confirmation of a high level appointee, the only place where we
22 consistently get complaints of sexual harassment are out of
23 Corrections. It doesn't happen in Mental Health; doesn't happen
24 in Social Services. There's something in that environment, it
25 seems to me, that makes it very bad for women who work there.

26 Now I'm hearing the same thing. I don't know whether
27 it's true or not. I have to go on what people say here and
28 listen to the other side as well. We haven't heard it all yet,

1 but I detect the same pattern.

2 Now, at San Quentin -- at Folsom, you said the third
3 time around they finally found something.

4 I don't know why it would take them three times
5 around. I mean, if all the police investigations are like that,
6 they'd never solve any case. They'd be working on the same
7 thing for a long time.

8 Now we're hearing it about San Quentin. Are you
9 going to send more teams back there to San Quentin, or are you
10 satisfied from what you've learned that there's no foundation or
11 basis for the complaints?

12 MR. TRISTAN: Well, Senator, I'd like to try to
13 address this from this perspective, and that is that almost four
14 years ago, our current Director came before the confirmation
15 committee. At that time, one of the big issues, as I recall,
16 was sexual harassment in the Department.

17 He made a commitment that he was going to do
18 everything within his power to try to eradicate that, but he
19 also was wise enough to know that some of it may be culturally
20 ingrained in terms of the way that the Department had
21 traditionally dealt with issues or with people

22 But he did set about a course, and did have -- we
23 have had numerous meetings, discussion, investigations, and I
24 can share with you, Senator, that most of the times that I have
25 recommended removal of a high level administrator, and it's
26 somewhere between 17 and 19 in almost six years of my being in
27 Headquarters, it has been as a direct result of investigations,
28 and some of them were very, very painful in terms of both to the

1 victims and to the people who were being accused.

2 It is a very difficult thing, I think, as you've
3 mentioned, for someone to come forward and speak. It's a very
4 difficult thing to testify in an investigation.

5 We just sent in a team to San Quentin as a result of
6 long-standing complaints, that it just seemed to come up every
7 now and then, every now and then, but we couldn't get a handle
8 on exactly what was transpiring there. We pulled together a
9 team of four people -- one a retired Associate Warden who had no
10 vested interest, had never worked at San Quentin -- and we said,
11 "Go find whatever it is that you find."

12 They've completed that investigation. I have not
13 thoroughly reviewed all of their findings. They did find some
14 what I would describe as some cultural issues at San Quentin.
15 It's my understanding that those findings have been shared with
16 Warden Calderon.

17 It's my understanding that he has set on an
18 aggressive course of action to try to correct some of those
19 problems there where, maybe, some of the minorities or women
20 felt like they were disenfranchised and they were -- did not
21 have an appropriate say or voice in terms of what was being
22 implemented there as policy. And I do think that one of the
23 expectations that we set of the Warden was that he go in there
24 and try to change some of this culture that was -- had been at
25 San Quentin.

26 Places like San Quentin and Folsom have been around
27 for just so many years. There are a tremendous number of
28 excellent, excellent people working there. There are also some

1 things that have been ingrained there for a long time that does
2 take some time to change.

3 And I believe that we, as a Department, not just
4 Warden Calderon, or Jim Gomez, or myself, but as a Department,
5 have to continue to work into the future before we can affect
6 just some permanent changes at all our institutions.

7 SENATOR PETRIS: Can you explain the cultural problem
8 you referred to?

9 MR. TRISTAN: The cultural problem that I was
10 referring to is where we had received complaints from
11 minorities, or line staff, or women that they said that they
12 felt that they were not being listened to, they were not being
13 dealt with appropriately.

14 SENATOR PETRIS: That's a long way from sexual
15 discrimination; isn't it?

16 MR. TRISTAN: Yes.

17 SENATOR PETRIS: That's specific when you get to
18 sexual discrimination.

19 Are you saying that some of the complaints about
20 sexual discrimination are blurred by differences of culture?

21 MR. TRISTAN: No.

22 SENATOR PETRIS: And that maybe the accused didn't
23 mean what the --

24 MR. TRISTAN: No, I'm sorry.

25 SENATOR PETRIS: -- victim --

26 MR. TRISTAN: I'm sorry. Maybe I'm using the word
27 "culture" in the wrong context.

28 What I'm saying by culture is that it -- it is in

1 some cases, some of the behavior was felt by some people to be
2 appropriate, but it was sexual harassment. But in some cases,
3 some of the perpetrators felt that it had been long-standing
4 practice, long-standing -- just something that was ongoing, so
5 some of the folks didn't feel like it was as long as we felt it
6 was.

7 SENATOR PETRIS: Can you give examples? What kind of
8 things are done on a regular basis that have been deemed
9 harmless for years which the administration felt was bad
10 conduct?

11 MR. TRISTAN: Not paying as much attention to how
12 shift and days assignments were made. Taking a critical look to
13 see how many women are on days, how many women are on evenings,
14 and how many women are on nights. We have 60 percent by union
15 contract, 60 percent of the assignments belong to
16 administration, 40 percent are strictly by seniority. Within
17 that 60 percent, we have a responsibility, in my opinion, to try
18 to make sure that there is equal distribution, and there's
19 fairness, and there's an equal opportunity for days assignments,
20 for weekends off, for special kinds of assignments so that
21 everybody has an opportunity.

22 SENATOR PETRIS: That's on the rotation?

23 MR. TRISTAN: On the various rotations, yes, Senator.

24 SENATOR PETRIS: Can you tell us specifically what
25 the Director has done since he made the pledge here that he
26 would go after this kind of conduct and make some improvements?

27 MR. TRISTAN: I think one of the things that the
28 Director did was hire more investigators in the affirmative

1 action office. I think that he went to great lengths at wardens
2 meetings to ensure that the wardens understood that sexual
3 harassment, discrimination, was not going to be tolerated.

4 He made a video tape that he wanted sent out to the
5 entire Department that clearly spoke to the issue of sexual
6 harassment and discrimination as an abuse of power, and that he
7 would not tolerate it, and would take action where ever he found
8 that that was occurring.

9 He went to every institution and tried to meet with
10 as many people as possible -- officers, clerks, doctors, nurses
11 -- on first, second and third watches; days, evenings and
12 nights, to try to instill in all levels of folks that there was
13 going to be some changes in the Department, that he was
14 accessible, that they could tell him.

15 He didn't want, for example -- several times I've
16 been at institutions with him and he's said, "No, I don't want
17 you walking with me, because there might be a perception that
18 you may inhibit some communications." And even though I feel
19 like I'm pretty open with people, he still said, "I don't want
20 you walking with me, because if I go up and talk to an officer,
21 I want that officer to feel free that there's not going to be
22 any bystanders listening and maybe misinterpreting what you're
23 saying." So I said, "Fine," you know.

24 So, I don't typically -- even though I may be at the
25 same institution, I don't typically walk with the Director
26 because he wants to have access to those line staff so that they
27 can tell him whatever their -- whatever they feel.

28 SENATOR PETRIS: Have there been less complaints

1 since the new policies were instituted?

2 MR. TRISTAN: As soon as his policies were
3 instituted, there were more complaints because, I think, people
4 felt freer to come forward and speak.

5 SENATOR PETRIS: That would be normal in the
6 beginning. What about -- let's see now. How long has he been
7 the Director, three years?

8 MR. TRISTAN: I think about three, three and a half
9 years, something like that.

10 SENATOR PETRIS: All right. Are they still going up,
11 or have they declined?

12 MR. TRISTAN: I can't speak with any certainty,
13 Senator.

14 SENATOR PETRIS: Well, I ask you because he isn't
15 here. He normally attends these hearings on the confirmation of
16 wardens. I guess he had some other commitment.

17 MR. TRISTAN: I do believe that there's someone here
18 from the affirmative action office. I haven't seen Antonio
19 Aguilar, but he could probably give you the statistics. I
20 can't; I'm sorry.

21 SENATOR PETRIS: Thank you.

22 CHAIRMAN LOCKYER: Senator Craven.

23 SENATOR CRAVEN: Thank you, Mr. Chairman.

24 I think that Senator Petris and I have, perhaps, a
25 feeling of deja vu as we listen to this, because before Senator
26 Petris articulated our position or our thoughts, I had that
27 thought in my mind, and I thought: this sounds very, very
28 familiar.

1 I can remember a whole battery of women officers
2 being in here, complaining and so forth. And then you were
3 explaining how you have the assignments, and one thing or
4 another.

5 All officers, or those persons who reach officer
6 rank, are all considered officers. That's it; isn't it? You
7 don't say: that's a male officer, or a female officer. They're
8 officers. Isn't that right?

9 MR. TRISTAN: That's correct, Senator.

10 SENATOR CRAVEN: There's no differentiation; isn't
11 that correct?

12 MR. TRISTAN: That's correct, Senator.

13 SENATOR CRAVEN: In other words, what you expect of a
14 male officer, you expect of a female officer; isn't that
15 correct?

16 MR. TRISTAN: That's correct, Senator.

17 SENATOR CRAVEN: I'm intrigued with the investigator.
18 You must have either an elite group of people who are going off
19 in the wrong direction, or something. I can't understand that,
20 how you could send three teams for the same problem.

21 Now, there's got to be something wrong there. What
22 are the ranks of the investigators?

23 MR. TRISTAN: I think special agents are at about the
24 captain level.

25 But I always -- whenever we send in a team, I always
26 try to send some high level administrator that is disinterested,
27 such as when we sent a team into San Quentin. It was an
28 Associate Warden, a retired Associate Warden, a couple of

1 investigators from the affirmative action office.

2 SENATOR CRAVEN: So, they have the equivalent of
3 being a captain in rank, these people, generally speaking?

4 MR. TRISTAN: Generally speaking.

5 SENATOR CRAVEN: So they should be very experienced
6 people; should they not?

7 MR. TRISTAN: Yes, Senator.

8 SENATOR CRAVEN: Are these problems so deep or inbred
9 into the system that they're hard to root out?

10 MR. TRISTAN: I think, Senator, that sometimes it is
11 the victim's unwillingness to come forward in some cases.
12 Someone may raise a complaint on behalf of someone, and when the
13 investigator goes and tries to interview the victim, the victim
14 says, "I don't want to talk about it. I have no complaint."

15 In other cases, we have no witness. It is one
16 person's word against another person's word. And in those
17 cases, we try to look at all of the circumstances: is there any
18 prior history on the part of the accused of sexual harassment or
19 discrimination; are there other things that may help us, lead to
20 a conclusion one way or the other. In many cases it is one
21 person's word against another person's word.

22 SENATOR CRAVEN: I understand that, because many,
23 many years ago, I operated in that aura as an investigator for
24 the District Attorney, and I cannot ever remember being replaced
25 or having somebody else go out and do the work that I did. Not
26 that I was perfect, but I just never ran into ran into that
27 situation.

28 And when you said, "we sent three teams in," I

1 thought: this must be either a very, very deep problem, because
2 I had never experienced anything like that. But, you know,
3 there are a lot of things that I didn't experience. One of them
4 was a good pay.

5 MR. TRISTAN: Senator, the reason I mentioned that is
6 to illustrate two points.

7 One is that when the Director came to the
8 Department, he recognized that we did have a serious problem,
9 and he tried to address it. So, I agree with you, we did have a
10 serious problem. I believe that we still have problems.

11 And the other is to demonstrate the Department's
12 tenacity in trying to get to the bottom of something.

13 SENATOR CRAVEN: Let me ask you a question, another
14 question.

15 This has nothing to do with what we're discussing,
16 simply you.

17 Were you not in here recently for confirmation?

18 MR. TRISTAN: No, Senator. My position does not
19 require a confirmation.

20 SENATOR CRAVEN: I'm confusing you with someone else
21 who you remind me of, happily so.

22 MR. TRISTAN: Did he get confirmed?

23 SENATOR CRAVEN: I'll tell you, I know from my own
24 experience and my age that, no matter what you do, there are
25 going to be people who are not happy with what is done. Always,
26 you have some, you know, malcontents. That's just life, I
27 suppose.

28 But, you know, I've heard so much in this area of our

1 operation, in the Corrections end, that Senator Petris has
2 referred to, that I'm beginning to get suspect, and I never was
3 that way in the past.

4 And someone, I don't know whether it was Nick who
5 mentioned it, said something about the old boys network. There
6 is such a thing. I don't think there's any question about that.
7 I've experienced it in many places over a long period of time.

8 And I just wonder if we have gotten it so firmly
9 ensconced into the Corrections area that officers, as those two
10 who testified here before us, and very emotionally, and there
11 was no phoniness about the feeling that the man had, the
12 question is the correctness of what he was thinking.

13 Did anybody ever take time to explain to him what the
14 problem was, or why he didn't have the opportunity to become a
15 captain? There has to be some reason. But obviously, it was
16 never communicated to him, because he holds within him a feeling
17 that you absolutely turned him down, turned your back to him,
18 paid no attention to him whatsoever.

19 And I can understand why he wept in telling that
20 story, because that's a sad story, because the man has given 23
21 years of his life to the service, and seemingly, we turn our
22 backs on him.

23 I think that that's a serious thing to contemplate,
24 and I wonder what's the answer to that?

25 I know that the problem to which he referred, at
26 least a portion of it, was not covered in the '89-90 report,
27 which I think you mentioned. And they say here:

28 "We conducted an investigation and

1 found no basis for the allegations."

2 Boy, that's a short sentence to cover a long, somewhat traumatic
3 experience, I think, for a lot of people.

4 I just wonder whether we move too quickly on some of
5 these things without spending time to investigate, to see, you
6 know, whether the allegations or the contentions have meaning,
7 and have substance, before we take an action on saying, "We're
8 going to lay the hands on this, and arise, you're the Warden."

9 So, it's just a thought that I have, which is a
10 complete reversal of an opinion I've held here for many, many
11 years.

12 I think certainly my colleagues are aware of what the
13 situation is, although I don't think some of them were here at
14 the time of the hearings that we had to which I have referred
15 earlier.

16 I just want to get that off my chest, Mr. Chairman,
17 and I feel that very strongly.

18 MR. TRISTAN: Senator, if I could -- I don't know if
19 this would be of any help or not, however, I can tell you that
20 the Department has worked extremely hard at affirmative action.

21 I think, and I haven't counted recently, however,
22 what used to be almost exclusively while male wardens at one
23 time, we now have about 30 percent of our wardens are black,
24 Hispanic, or women.

25 And it almost -- we worked very, very hard at trying
26 to ensure everyone an equal opportunity.

27 In terms of Lieutenant Rubio's issue, without
28 minimizing his obvious, you know, very, very strong convictions,

1 and the number of years that he has served in the Department,
2 the captain's position is an extremely competitive position.
3 There is typically one or two captains at a maximum per
4 institution. You get on the list through a competitive basis,
5 and then you go interview at the institution that has the
6 opening. So, it is a very competitive process.

7 It's something that typically we do not order a
8 warden to hire someone. And when they go interview, they
9 interview from the list of the first three ranks. And
10 typically, a warden and the administrators want to take a look
11 at several, not just one, candidate to see who is the best
12 person for the job, because the captain is the chief custodial
13 officer for that institution and has to -- the warden has to
14 have just the utmost confidence in that individual to operate
15 the safety and security of that institution.

16 So, it is a very competitive process.

17 SENATOR CRAVEN: Well, see, that's something that I
18 learned, and I appreciate your telling me that.

19 I had felt that a captain was a person who may have
20 been in charge of a watch, or something like that. In other
21 words, a senior officer in charge of others, and that's not the
22 case at all.

23 It tends to be administrative rather than what I
24 choose to call physical; is that correct?

25 MR. TRISTAN: I would describe the duties as probably
26 50-50. However, at our medium sized institutions, we have one
27 captain per prison. At our large institutions, we typically
28 have one captain that's in charge of all of the various watches

1 in terms of the watch commanders, the lieutenants and the
2 sergeants, the armory, the range, those areas are their areas of
3 responsibility. The program administrators in the -- head,
4 typically run the day-to-day operations within each facility
5 within a prison. Typically there's four or five facilities
6 within a prison. So typically, there's only one and, at the
7 maximum, two captains per prison. At our large prisons we may
8 have two captains.

9 SENATOR CRAVEN: A lieutenant, in order to get on the
10 Captain's List, does he or she have to pass a test, or is there
11 any test for that?

12 MR. TRISTAN: Yes, there is a captain's exam.

13 SENATOR CRAVEN: So, once you take it, and presuming
14 that the person taking it passes, they are passed, and they
15 become number 7, 8, or 9, or whatever it is, on the list; is
16 that correct?

17 MR. TRISTAN: That's correct.

18 SENATOR CRAVEN: That's making seniority behind those
19 who preceded them; is that correct?

20 MR. TRISTAN: That's correct.

21 SENATOR CRAVEN: Thank you very much. I appreciate
22 that.

23 CHAIRMAN LOCKYER: Senator Ayala.

24 SENATOR AYALA: The investigations of these
25 complaints, not necessary the one against the Warden here, are
26 conducted by whom again? What kind of teams, and how are they
27 composed? Where do you get these people to investigate?

28 MR. TRISTAN: Typically affirmative action type

1 investigations --

2 SENATOR AYALA: I'm coming to affirmative action in a
3 minute here, but go ahead.

4 MR. TRISTAN: Affirmative action investigations are
5 usually done by an in-trained EEO investigator out of our
6 affirmative action office. They're usually teamed up with an
7 administrator or an investigator, and sometimes all three from
8 another institution.

9 In other words, I would have like, let's say, an
10 Associate Warden from CIM, an SSU agent, and --

11 SENATOR AYALA: A three-member team?

12 MR. TRISTAN: Sometimes three, sometimes four,
13 because sometimes there may be upwards of a hundred people that
14 they need to interview.

15 SENATOR AYALA: Do these people do the investigation
16 of complaints?

17 MR. TRISTAN: That's correct, Senator.

18 SENATOR AYALA: The perception up there is that
19 you're trying to save face from within.

20 Why don't you get people from the private sector to
21 be a part of this team so it doesn't look like you're putting
22 Colonel Sanders in charge of the chicken coop?

23 If you have people up there who are looking at the
24 way it is and not trying to protect anyone from within, instead
25 of getting all from the Department of Corrections, I would think
26 that you'd have a mix of Correctional officers, whatever rank
27 they want to get in there, and civilians from the private sector
28 to make sure that there's a balance there and not just from

1 within.

2 From within investigations sometimes don't give you
3 the best results. I want you to take a look at that, see if we
4 can get a mix on this team that you have investigating different
5 complaints.

6 Now, affirmative action's been talked about here all
7 night. What is affirmative action to you? What does that mean?

8 Affirmative action means a lot of things to a lot of
9 people. What does it mean to you?

10 MR. TRISTAN: To me, it means an equal opportunity
11 for all individuals, regardless of their sex, their race, their
12 national origin, their religious beliefs, sexual orientation,
13 that they have equal opportunity.

14 SENATOR AYALA: They're qualified; no quota system.

15 MR. TRISTAN: Right.

16 SENATOR AYALA: Because, you know, we advance people
17 because of quotas. We have to show affirmative action when
18 they're sometimes not really qualified, and we bypass people who
19 are qualified for the sake of affirmative action, and that's
20 affirmative action reversed.

21 MR. TRISTAN: That's correct, Senator.

22 SENATOR AYALA: I would suggest to you that certainly
23 we should have a mix of minorities and women, and all these
24 groups, but it should be on qualifications, period, and not
25 because of any quota system that you folks might be involved in.

26 So, those two things, I want you to know that I think
27 that the make-up of your teams, the make-up should be a little
28 more flexible with people from without, and not only people from

1 within, making these investigations, to get a clear picture and
2 not look like -- people's perception up there is that you're
3 covering up for yourselves, and it's not in your best interests
4 to do that.

5 MR. TRISTAN: Thank you, Senator.

6 CHAIRMAN LOCKYER: How many complaints have you had
7 to look into in the several years you've been doing this
8 involving a position in which Mr. Calderon was serving as
9 Warden? I guess he goes back into other jobs during that time,
10 I think. Have you had any?

11 MR. TRISTAN: Investigations that involved the
12 Warden?

13 CHAIRMAN LOCKYER: Yes, Mr. Calderon or his close
14 associates.

15 MR. TRISTAN: Of Mr. Calderon, one. Of other
16 wardens, I have to go back, and I would hate to give a number
17 that --

18 CHAIRMAN LOCKYER: I'm just trying to get you to
19 recall any that were matters you looked into involving Warden
20 Calderon or those very close to him. There's only one you can
21 recall?

22 MR. TRISTAN: I can recall one of Warden Calderon
23 that involved some allegations of sexual harassment. We did
24 not, you know, find him culpable.

25 And there was one allegation at one time that came in
26 in the form of a letter, an allegation of inappropriate use of
27 his state vehicle, and we looked into that.

28 CHAIRMAN LOCKYER: And again --

1 MR. TRISTAN: That was years ago.

2 CHAIRMAN LOCKYER: -- no basis for that one?

3 MR. TRISTAN: No basis for that one.

4 CHAIRMAN LOCKYER: Yes, sir, did you want to comment?

5 MR. HOWELL: Yes.

6 My name is Richard Howell. I'm a CC II currently
7 serving at at CRC.

8 I consider myself a grunt, meaning I'm one of the
9 people that's down in the trenches, dealing with the convicts.
10 And then I rise up every now and then and have to deal with
11 staff.

12 I'm here to tell you that Mr. Calderon has backed me
13 in terms of dealing with staff. Based on my religious beliefs,
14 he has encouraged me to be strong, hold my head up, and get on
15 with my job.

16 Now, the disgruntled employees that come across in
17 this room, downing Mr. Calderon, I'm not surprised at because we
18 have those everywhere. Disgruntled people.

19 But if they want to speak from their heart, they know
20 good and well they need to hire this man. There's no good
21 reason why Mr. Calderon should not be confirmed Warden of San
22 Quentin State Prison, because I know how San Quentin State
23 Prison is. I work there. I did everything from working in the
24 grease traps to Death Row, and everything in the middle.

25 I started out as a part-time CO, and I waited and got
26 promoted to a Correctional Counselor. I promoted out of there
27 to Susanville State Prison. I got married at Susanville, and I
28 moved to CIC.

1 All along, it seems I'm following Mr. Calderon from
2 prison to prison, but this man is ace. This man's the only man
3 I know of his rank that actually got on the tiers and helped me
4 deal with convicts on a physical level. Now, it's not too many
5 people going to be doing that at this man's level.

6 But I don't think Mr. Calderon would bite his tongue,
7 nor will he back up from any convict, and that's the real deal
8 that we deal with in prison, is the convicts.

9 Yes, staff have problems. Yes, that's going to
10 happen. But the real issue is the convicts. What do we do with
11 the convicts, because if the convicts decide to tear the prison
12 system up, or to tear the prison down, or burn it down, you've
13 got to have people who know how to deal with those convicts to
14 keep them from tearing that prison down, because we don't want
15 to have to spend, \$40-50 million to re-build a prison that the
16 convicts tore up because they couldn't get along with the
17 administration.

18 And if you notice any prison Mr. Calderon has been
19 in, there has been no such problems like that. This man knows
20 how to deal with the convicts. He knows how to deal with staff.

21 Just because some staff don't like the way the man
22 deals with them based on their negative conduct, or based on
23 some improprieties that they've involved themselves in, is no
24 reason why not to confirm the man.

25 I'm for his confirmation. I'm a grunt. I'm not
26 afraid to tell you I'm a grunt, and I'm not afraid to stand up
27 in front of this Committee and vote for his confirmation.

28 Thank you very much.

1 CHAIRMAN LOCKYER: Thank you, sir.

2 Anyone else?

3 Warden, I don't know if you want to comment or
4 respond in any way to anything said so far today --

5 MR. CALDERON: I sure do.

6 CHAIRMAN LOCKYER: Certainly. Go ahead.

7 MR. CALDERON: There's been a lot of things said here
8 that attacked me professionally, personally. I'm not even going
9 to get into the kinds of things I resent, and I'm offended by
10 the kind of comments that were made here.

11 There was no real specifics, but I will try to
12 respond as best as I can to some of the specific kinds of things
13 that were said.

14 I heard Mr. Rubio say that he's been with the
15 Department, I think he said, 23 years, and interviewed
16 20-something times around the state.

17 I first became aware of Mr. Rubio, I think, it was
18 back in about 1987 or '88. I was a Chief Deputy Warden at
19 Susanville. He came up for a captain's interview. I was
20 chairing the panel.

21 I did not select him because he was not the best
22 person for the job. I selected another individual that clearly,
23 clearly was the top person for that job.

24 He filed a discrimination complaint against me,
25 saying that I discriminated against Hispanics. I responded at
26 the first level of the appeal or the grievance that -- I
27 reminded him that I was a Hispanic myself, and I had been a
28 captain for five years at San Quentin, and I was very intimately

1 familiar with the role of a captain.

2 Secondly, what I had done for the eight or ten that
3 had interviewed is, had them do a written test, for lack of a
4 better term, to determine the rate -- writing abilities because
5 a captain does a lot of that. Again, going back to my
6 experience.

7 Clearly, clearly this individual was nowhere in the
8 same league as the other folks, the recommendation that I made.

9 After that, of course, I came to CRC, and once again,
10 we were working at the same place together. I did what I could
11 to try to get along with this individual, but to my knowledge,
12 in 20-some years, he has had a problem with every administration
13 that he's ever worked under. And I just want to leave that at
14 that.

15 Mr. Tafolla, I was forced to take action against him
16 for treating women in our personnel office in a very demeaning,
17 disrespectful manner. The women came to complain to me. I had
18 certain standards that I expected of my employees, especially
19 supervisors, and I had told him time and again that went
20 contrary to the treatment of people.

21 He went and blatantly disregarded my instructions. I
22 was forced to take action against him.

23 Very conveniently, he forgot to mention that I was
24 one of the ones that promoted him to a Correctional Counselor
25 III. However, when we went through the budget cuts that we had
26 to make, that was one of the positions that I was ordered to
27 cut, so I had to cut that position.

28 I attempted to work -- and God knows, I attempted to

1 work with these individuals, but it became such a hostile kind
2 of communication that I could no longer sit down and talk to
3 these individuals.

4 I was the Warden in that facility. I was responsible
5 for everything that happened there. And I continue to believe
6 that I did the best of my ability to run that place.

7 I wanted to touch a little bit on the issue about the
8 escapes that were mentioned. Yes, there was an escape last year
9 when I was the Warden there. It was about the time I was coming
10 -- I don't remember the date. I think it was toward the latter
11 part of last year, there was an escape. He mentioned that.

12 The fact of the matter is, the escape occurred at
13 almost at noon, a bright and sunny day. There was a
14 correctional officer not 52 yards from the point of where these
15 two individuals escaped.

16 I think, if you'll recall, he said that we had not
17 manned that position. That's just not true. That was there.

18 We took adverse action against the individual that
19 was in that tower as a result of that.

20 As to the other personal attacks that were made
21 against me, I'm not going to respond as I don't have any kind of
22 specific information.

23 CHAIRMAN LOCKYER: There's some newspaper stories
24 that we've seen that relate to former inmate's lawsuit.

25 Do you know the circumstances that those relate to?

26 MR. CALDERON: Yes, Senator.

27 CHAIRMAN LOCKYER: There're at least pretty serious
28 allegations in the legal action. I understand that that's still

1 a pending matter, but can you help us understand what may have
2 occurred in those instances?

3 MR. CALDERON: Yes, Senator.

4 I just had a meeting with the attorney who's been
5 assigned to me, as well with some of the other folks mentioned
6 in that newspaper.

7 On advice of counsel, I really can't at this point be
8 very specific because of the pending litigation.

9 I can tell you that I categorically deny the
10 allegations made by this inmate that, by the way, was committed
11 there for drug abuse and some other kinds of things.

12 That's the best that I can do at this point.

13 CHAIRMAN LOCKYER: It's your view that the officer, a
14 sergeant, I believe, that was accused of raping the inmate, that
15 didn't occur, or you don't think it did?

16 MR. CALDERON: I have to believe it didn't occur,
17 absent any evidence to the contrary. I have to believe it did
18 not occur.

19 To answer your question, Senator, no, it did not.

20 CHAIRMAN LOCKYER: Well, the claim is that the rape
21 took place in a room where no one else was in the room except
22 the officer and the inmate, and I guess it would be hard to find
23 evidence in that circumstance.

24 I don't know that proves that it didn't happen, just
25 that it fails the lack of proof.

26 MR. CALDERON: I understand, Senator, but I would
27 choose to believe that a lieutenant with 15 -- a correctional
28 lieutenant, a peace officer, with 15 years of loyal, dedicated

1 service as opposed to a convicted felon at this point.

2 CHAIRMAN LOCKYER: Other questions?

3 I wanted to ask you about the program that's, I
4 guess, of fairly small size, but still worthwhile, it seems, at
5 San Quentin, the boot camp is what, I guess, we call it in the
6 vernacular. The alternative sentencing program, or something
7 like that.

8 How is that working out? What is your sense of its
9 good and bad?

10 MR. CALDERON: Well, as you know, Senator, that's a
11 five-year pilot project that the Legislature authorized.

12 It's still a bit early to talk about any kind of, you
13 know, scientific -- any kind of results.

14 CHAIRMAN LOCKYER: When did it start?

15 MR. CALDERON: January of '93.

16 From what I've seen there as of January, I'm very
17 impressed with the program, especially after working so many
18 years, 28 years, with the other, quote, kind of inmate. And to
19 see these inmates, and being from a former military background,
20 it just -- it's not just a military kind of cadence calling, and
21 those kinds of things.

22 When you talk to the inmates, one to one, you get a
23 completely different story than when you talk to the inmates
24 that I'm so used to dealing over the many years. When you talk
25 to the families, when I go to the graduation -- I try to make
26 all the graduations every Friday and I talk to the families.

27 Some of these inmates have never accomplished or
28 finished anything that they started in life. This is the one

1 and only thing they've ever -- and it's a heck of an
2 accomplishment for them.

3 So, to respond to your question, I think, as a Warden
4 at San Quentin, I'm very positive about the program at this
5 point.

6 There is one other thing that I wanted to make sure
7 that the Committee clearly understands, the issues that we're
8 talking about -- the sexual harassment, the escape, and what
9 have you -- we're not talking about San Quentin. We're talking
10 about at CRC, not since I've been at San Quentin, January the
11 1st.

12 CHAIRMAN LOCKYER: Have we heard from everyone who
13 wished to comment?

14 What's the pleasure of of --

15 MR. CALDERON: Senator, can I say one other thing?

16 CHAIRMAN LOCKYER: Oh, yes.

17 MR. CALDERON: We also talked about the -- or the
18 gentleman spoke about my hiring practices.

19 I'd just like to say that I would put my record up
20 against any other warden in the Department in terms of the kinds
21 of appointments that I've made.

22 Just to illustrate that point, at San Quentin I was
23 instrumental in appointing -- of course, the Director has to
24 appointment, but I was the one that recommended the appointment
25 of the first woman Chief Deputy Warden at San Quentin since
26 1852. I have appointed two other women managers in the
27 Department, where we only had one at San Quentin.

28 While I was at CRC, again, I'm not going to bore you

1 with all the details, but I was instrumental in appointing many
2 women, and African-Americans, and Hispanics, and others.

3 So again, I would put my record up against any other
4 institution.

5 CHAIRMAN LOCKYER: I'd like to indicate agreement and
6 support for your efforts in that respect.

7 Pleasure of the Committee?

8 SENATOR BEVERLY: Move we recommend confirmation.

9 CHAIRMAN LOCKYER: We have a motion.

10 Any further discussion? Let's call the roll.

11 SECRETARY WEBB: Senator Ayala.

12 SENATOR AYALA: Aye.

13 SECRETARY WEBB: Ayala Aye. Senator Beverly.

14 SENATOR BEVERLY: Aye.

15 SECRETARY WEBB: Beverly Aye. Senator Petris.

16 SENATOR PETRIS: Aye.

17 SECRETARY WEBB: Petris Aye. Senator Craven.

18 Senator Lockyer.

19 CHAIRMAN LOCKYER: Aye.

20 SECRETARY WEBB: Four to zero.

21 CHAIRMAN LOCKYER: Thank you, sir.

22 Let's take ten minutes.

23 [Thereupon a brief recess was taken.]

24 CHAIRMAN LOCKYER: We'll go back to Mr. Fred Miller,
25 Department of Social Services.

26 Tell us about what you're doing, and why you like
27 this job, and why wouldn't you rather be a warden instead?

28 [Laughter.]

1 MR. MILLER: Well, I guess the first test is to
2 figure out how to turn the mike on.

3 CHAIRMAN LOCKYER: I think it's on. Just talk right
4 into it.

5 MR. MILLER: Good afternoon, Mr. Chairman and
6 Members.

7 Thank you for the opportunity to provide about a
8 90-second overview of my background, and then to answer your
9 questions.

10 I've been a resident of the State of California since
11 1960. I've been married 31 years. I have two children, 29 and
12 25. I have two grandsons age three, and a 5-year old
13 granddaughter who's basically the decision maker for my family.

14 Occasional golf, fishing, camping, plus frequent
15 family get togethers, to sum up my outside activities.

16 Other than four years in the Air Force, and temporary
17 work while attending college, my work experience is within state
18 service. I've worked for the State of California for 25 years
19 in various positions, all within the Health and Welfare Agency.
20 I've been the Deputy Director of Adult Services, Disability
21 Evaluation, and for several years was the Deputy Director of the
22 Community Care Licensing Division.

23 I have managed large, multidisciplinary staffs
24 located in numerous field offices throughout the state.
25 Successful management and leadership of those programs required
26 a clear mission that allowed staff statewide to pursue a common
27 objective.

28 The experience I gained while there has allowed me an

1 opportunity to be successful as Chief Deputy Director over the
2 last 11 months. My role is: to provide leadership to a group
3 of managers, a team; to help define clear objectives and outcome
4 measures to accomplish the goals of the Director; to do that
5 within the limits of the statute, and to work to modify the laws
6 so that our mission can be accomplished, if necessary.

7 Our mission is to ensure that needy and at-risk
8 children and adults are served, aided, and protected in ways
9 that strengthen and preserve families, encourage personal
10 responsibility, and foster independence. A mission that can
11 only be accomplished through the collective efforts of the
12 administration, the counties, the federal government, and the
13 California Legislature.

14 And I look forward to working with you to accomplish
15 our mission.

16 CHAIRMAN LOCKYER: Well, let me first ask if there
17 are questions from Members?

18 I'll ask also if there's anyone that wishes to
19 comment on Mr. Miller's confirmation, that they join us in
20 front.

21 Yes, ma'am.

22 MS. SMITH: Good afternoon and thank the Committee.

23 I was just nervous, because I thought I was going to
24 have to run out before I testified. And you don't know what I
25 would have had to face when I get back home.

26 CHAIRMAN LOCKYER: Well tell us who you are for the
27 record.

28 MS. SMITH: I'm Ovie Smith, Ovaria Smith, from Los

1 Angeles, California.

2 I represent the Society of California Care Home
3 Operators and many others. I operate a home, Ovie's Guest Home,
4 one home for the aged, and also a community care facility called
5 Willing Workers, of which we're very proud of. We house like
6 180 a day adult residents.

7 I'm very glad to be here to talk about Mr. Miller,
8 because let me tell you, if I had to go back home before I
9 testified, I would be in trouble. My people sent me here, and
10 my plane, I've been waiting to get here just to tell you what we
11 think about Mr. Miller.

12 I met Mr. Miller sometime ago, about 27 years ago.
13 And that was before -- we were both on the advisory committee
14 for licensing. And, of course, I go way back, when AB 344, when
15 the bill was first introduced for licensing.

16 I want to tell you that we went through a lot of
17 terrible times, but upon Mr. Miller coming to licensing, when he
18 was in charge of licensing, what he brought to us is a dignity,
19 but through the law of enforcement.

20 At one time I thought we -- we're providers -- I
21 thought we were going to kill everybody, and I didn't think
22 nobody was listening to what we had to go through when we were
23 trying to do a job.

24 But I want to tell you today that -- and Mr. Miller
25 know when he came aboard as a Deputy Director, I questioned him
26 because we had been together before, and we argued. We argued.
27 We did. And I said to his Director, Linda, Ms. McMahan, "Are
28 you sure he's up to the job," because I felt he was maybe too

1 young or something. I didn't know.

2 And I'm serious. And I said, "Let me tell you." And
3 I want you to know, Mr. Craven, I went to San Diego. We were
4 fighting all over the state; I'm serious.

5 So, Linda said, "Ovie, I assure you, he's going to be
6 all right."

7 And at one time, I want to tell you, you don't know,
8 but I promised them I will have all of you investigated,
9 everybody -- everybody -- because I'm just that serious about
10 people, and my whole heart is with it.

11 And I want to tell you that upon Mr. Miller coming in
12 as Deputy Director, he listened. That's the first thing.
13 People need to listen. They don't listen, okay.

14 Fred, I said, you've got to listen. He came to Los
15 Angeles, and he sat down, and he listened. Of course, I won't
16 tell you about the fight we had, and he accused me of doing bad
17 things to him, but I didn't. I just forgot, okay?

18 But anyway, when Fred came on, I want to tell you --
19 he's Fred to me, because I'm much older than he is -- but he
20 executed the law. I want you to know that. But he done it with
21 dignity; he did listen.

22 And today, license, I'm telling you, is better than
23 it has ever been before. And I attribute him with the success.

24 And that's all I come to say. Let me say this. Many
25 people wanted to come, but we didn't know it until later. You
26 may get a lot of letters from different constituencies all over
27 the state, because I represent not only the Society of
28 California Care Home Operators, but people all across the state

1 because they know I'm going to be truthful with them, and I'm
2 going to tell them the truth when they call me.

3 So, you'll probably get letters. It may not be
4 saying right, I don't know, but they will be letting you know
5 what they feel about Mr. Miller.

6 Thank you so much, and I've got to catch a plane. I
7 just wanted to let them know I was here, so I won't get in
8 trouble.

9 Thank you.

10 CHAIRMAN LOCKYER: Is there anyone else related to
11 Mr. Miller who would like to comment?

12 [Laughter.]

13 MR. MILLER: She's actually my surrogate mom.

14 CHAIRMAN LOCKYER: Yes, sir. Are you Mr. Webb?

15 MR. WEBB: Yes, I am.

16 CHAIRMAN LOCKYER: Yes, I'd like very much to hear
17 your comments.

18 MR. WEBB: Okay.

19 My name is George Webb. I was born and raised in the
20 small town of Oroville, graduated from high school there, spent
21 three years in the Military Police in Germany as an
22 investigative reporter for the CID, later graduated from San
23 Jose State, worked in construction, taught English for Oroville
24 Adult Ed., and now I help my wife in her business, Countrie
25 Folke Home Care, of which she is the administrator and licensee.

26 Let me tell you a little bit about Oroville. This
27 background information is essential to understanding what it is
28 I'm trying to say. Let me tell you, I am talking about my own

1 race of people, the people I was -- this is the town I was born
2 and raised in, where I still live.

3 To begin with, In Oroville as a business person, you
4 don't go shopping on the 1st or the 15th. That's when the
5 people on welfare get their checks. If you live in Oroville,
6 you can spot welfare people with one glance.

7 In the grocery store, you can see them pushing their
8 carts full of frozen, prepared foods, snack food, chips, soda
9 pop, ice cream, and choice cuts of expensive meat. You won't
10 see staples like beans, flour or rice that take time to prepare.

11 The typical person pushing the cart will have on
12 either mismatched clothes, wrinkled or soiled clothes, or
13 clothes that don't fit, or all three, and thongs. The person
14 invariably will need a haircut. The person will have two or
15 three kids in tow. Some of the kids will be running back and
16 forth up the aisles, grabbing food, and then discarding it
17 somewhere else when something new catches their fancy.

18 The kids are invariably talking loud, are unruly, and
19 show very little signs of any self-discipline. Every so often
20 the mother will yell some cuss word at them as a token effort of
21 parental control.

22 No, it's not good policy to go shopping on the first.

23 Also, when food stamps were picked up at the post
24 office, that as also a place to avoid, with the lines extending
25 down the lobby, through the foyer, down the steps, and out to
26 the sidewalk.

27 You can also spot the welfare coming down the street
28 in their cars.

1 SENATOR AYALA: Mr. Chairman.

2 Excuse me. I wonder if we can get down to why we
3 should confirm Mr. Miller or not confirm him. I think that's
4 what we're here for, sir, with all due respect. I think we
5 should get down to the point, why this man is eligible or not
6 eligible to be confirmed.

7 MR. WEBB: Okay.

8 CHAIRMAN LOCKYER: I just want to state for the
9 record that I very much disagree with the comments you've made
10 so far that stigmatize.

11 But I'd like to hear your comments about Mr. Miller
12 and why, if there's some factual circumstance, or an action that
13 you disagreed with, or something of that sort.

14 MR. WEBB: I realize that many people will think that
15 I'm drawing a stereotype of welfare recipients, but what I'm
16 describing is the reality as it exists in Oroville.

17 If you want, I will get to the care home business of
18 my wife.

19 CHAIRMAN LOCKYER: Yes, please.

20 MR. WEBB: My wife is a medical technologist from the
21 Philippines. I have discovered that people of Pacific Islander
22 ancestry dominate the care home industry. As a race of people,
23 caring for others appears to be their chosen field.

24 There is not one Filipino in Butte County that's
25 getting welfare. They either have care homes, or they work for
26 other Filipinos that have care homes.

27 So what does the State of California do to show its
28 undying gratitude for this race of people that is dedicating

1 their lives to taking care of the elderly, the mentally
2 impaired, and the castoffs of society that no one wants?

3 Why, the State of California is doing everything it
4 can to put them out of business, of course, with ambiguous,
5 subjective administrative law and over-zealous bureaucrats with
6 unchecked power.

7 For many Filipinos, English is a second language.
8 Most Filipinos do not want to fight the State of California.
9 They just want to be allowed to work and enjoy the profit that
10 accrues from their labor. They come to America to enjoy the
11 benefits of a market-driven economy.

12 Being in business as a care home operator is no
13 longer determined by the marketplace. The centralized planning
14 from the top down that stifled the economy of Russia and led to
15 the economic collapse of that country is now firmly entrenched
16 in California.

17 Being a good care provider in California is
18 absolutely no guarantee of being allowed to stay in business.
19 The State of California, represented by Community Care
20 Licensing, determines who will and who will not have a license,
21 and this determination is based on the personalities of the
22 people involved and not on the quality of care.

23 My wife's facility in Oroville, Countrie Folke Home
24 Care, comes highly recommended by doctors on the Board of
25 Directors at Oroville Hospital, by Butte Home Health, by
26 California health professionals, by the discharge planners at
27 Oroville Hospital, by the Public Guardian's Office, by the
28 ombudsman's office. The County Coroner has her father at the

1 facility. A judge has a brother at the facility. A nurse has
2 her mother-in-law at the facility. A state investigator has her
3 father at the facility. A bank president has his mother at the
4 facility.

5 CHAIRMAN LOCKYER: Mr. Webb, what's the beef?

6 MR. WEBB: Okay, these people have visited -- okay.

7 One person from Community Care Licensing, one person
8 who is not a health professional, one person who has never cared
9 for an elderly person in his life, one person who has never
10 operated a business in his life, made the unilateral decision to
11 initiate revocation proceedings against my wife's license, and
12 denied her and myself a license at another facility that we
13 purchased.

14 This one bureaucrat is stating that only his opinion
15 counts, that only he will decide who will be allowed to operate
16 a care home, and who will not. His ego must be served before
17 the needs of the clients.

18 If a care home provides bad care in a small town like
19 Oroville, where everyone knows everyone, then that person will
20 be out of business because very few people will decide to buy
21 those services. That is the marketplace at work.

22 The way it works now, the state determines how much
23 we receive for our services if we care for SSI clients. The
24 state has the final say on who can expand his business. The
25 state has the final say if one can buy another care facility,
26 and the state even determines if one can stay in business, and
27 none of the decisions are based on market forces or quality of
28 the goods and services produced. This is central planning.

1 To balance the books, I will state that Deputy
2 Director of Community Care Licensing, Martha Lopez, has
3 initiated an investigation of this in Chico. But how was such a
4 thing allowed to happen? How many times has it happened to
5 other people who didn't know how to scream bloody murder to
6 their elected Assemblyman?

7 I will say that I feel very fortunate in having
8 Bernie Richter as my Assemblyman. Without him, my wife and I
9 would have faced a very tough and expensive battle. We still
10 may.

11 An SSI client pays \$23 per day. One hour for an
12 attorney will cost a care provider five days' revenue of one
13 client. How can care providers who care for SSI clients
14 possibly afford to fight the State of California?

15 The state bureaucrats at Community Care Licensing
16 know this. They have no financial liability for their actions.
17 They can act with impunity.

18 Why is one state bureaucrat allowed to have so much
19 unchallenged unilateral power over a business? Why is there no
20 committee of health care professional that has the power to
21 approve or deny these revocation/denial proceedings?

22 The Governor of the State of Washington, just last
23 week, appointed a 22-member task force to streamline
24 administrative law to make the law easier for citizens to
25 understand. Can the State of California afford to do any less?

26 A couple of weeks ago, I read in the Sacramento Bee
27 that moving companies were hard-pressed because the number of
28 people moving out of California far exceeded the number people

1 moving to California. And they, the truck drivers, were forced
2 to make the return trip empty.

3 Now, it goes to figure that people that can afford a
4 moving van to move their stuff for them must be people with
5 money. People on welfare don't hire moving vans.

6 If the population of California is growing, and if
7 people with money aren't moving here, then it doesn't take a
8 genius to figure out just who is moving here and why.

9 So, why is the State of California, represented by
10 Community Care Licensing, doing all that it can possibly do to
11 stifle and suppress the care home industry?

12 My wife and I applied for a license back in January
13 for a new facility. We're still fighting the Chico District
14 Office for a license.

15 After a denial, the applicant must wait seven months
16 to a year for a hearing on the charges. That represents seven
17 months to a year of paying mortgage on a building with no
18 income.

19 My wife and I have lost lots of money, as have many
20 other care providers. One state bureaucrat can cause a care
21 home operator to go bankrupt.

22 Now, don't ever think that the American businessman
23 is dumb. The next house that I convert into a residential care
24 facility for the elderly will have the plumbing and electrical
25 connections necessary to convert the rooms to SROs, Single Room
26 Occupancy, for independent living. This is where new investment
27 money is going, precisely because the State of California is so
28 difficult to deal with.

1 Is the state going to pass a law making it illegal to
2 rent a room to someone over 65? Will that elderly person be
3 better served? No, absolutely not.

4 An elderly person will pay approximately the same
5 money and receive no care. In fact, it would be illegal for me
6 to provide any care.

7 And if you think things are bad now, just wait for
8 the current crop of welfare recipients to hit the age where they
9 need residential care. These are the SSI clients of the future:
10 people who have never been responsible for anything in their
11 entire lives. These people will know how to work the system.
12 They have all the necessary phone numbers memorized to put a
13 care provider right out of business.

14 Have you ever heard of a business where the clients
15 have unlimited access to use your phone? Where you have to
16 transport your clients all over town for free?

17 The laws are ambiguous enough for Community Care
18 Licensing to enforce it as such. The laws are intentionally
19 ambiguous to allow such free interpretation by Community Care
20 Licensing, and I have just touched the tip of the iceberg.

21 If the people on welfare were harassed anywhere near
22 the way that I've seen Filipino care home operators harassed,
23 believe me, they'd go get a job.

24 I would like to see Fred Miller assert his influence
25 as Director of Social Services to make Butte County the
26 retirement center of the state, not the welfare capital of the
27 state.

28 Thank you.

1 Any questions?

2 CHAIRMAN LOCKYER: No, I don't think so, sir. Thank
3 you.

4 Mr. Miller, how many staff positions, that is, the
5 administrative hierarchy, would you estimate are between your
6 Department and the Oroville inspector? Do you have any sense of
7 how many that might be?

8 MR. MILLER: Two.

9 CHAIRMAN LOCKYER: So, there'd be two people between
10 you and that person?

11 MR. MILLER: Yes.

12 CHAIRMAN LOCKYER: Are you then familiar with the
13 circumstances of this case?

14 MR. MILLER: I'm not familiar with the circumstances
15 of the case. I am familiar with the issue that's been raised in
16 Chico. I am familiar --

17 CHAIRMAN LOCKYER: Oroville.

18 MR. MILLER: Chico and Oroville area. It's serviced
19 by the Chico --

20 CHAIRMAN LOCKYER: It's all that office?

21 MR. MILLER: Yes.

22 And we have, in fact, the Deputy Director of
23 Community Care Licensing, Martha Lopez, is meeting locally in
24 the area to review the cases that are in question.

25 CHAIRMAN LOCKYER: What's the controversy about?

26 MR. MILLER: Basically, some of the issues are around
27 facilities, that their licenses have been revoked because of
28 lack of care and supervision or other reasons. Other issues are

1 related to facilities that have been cited for serious
2 deficiencies.

3 My concern is that the Department has looked at these
4 situations, made sure that the environment -- that there is an
5 environment where folks can live in a safe and healthy
6 environment, but also to make sure that we have provided the
7 opportunity for the providers to receive training, to receive
8 technical assistance, and other assistance in order to operate
9 their facilities in compliance.

10 We do have an active community effort going on there
11 now to try to address that.

12 CHAIRMAN LOCKYER: Sir.

13 MR. KELCH: Yes, Chairman Lockyer.

14 Derrell Kelch with the California Association of
15 Homes for the Aging.

16 Originally, I was just going to say that we support
17 Fred Miller in his appointment. Over the years, we've disagreed
18 many times. I think you heard that from Ovie. She's a tough
19 act to follow.

20 But the one thing that we've always found, which she
21 stated, was that Mr. Miller has always been professional, and
22 has always been open, has always willing to address the tough
23 issues.

24 I tend to want to respond some to the earlier
25 testimony. Some of the toughness of the regulations and
26 statutes which he cited have been carried by our Association.
27 Senator Mello has carried far-reaching legislation in bringing
28 an element of standards and quality to the area of residential

1 care facilities for the elderly.

2 We have not heard these kinds of comments generally
3 from providers out there, that they are unilaterally enforced or
4 inappropriately enforced.

5 In fact, our feeling is that we still have much to do
6 to make sure that we maintain the quality in our residential
7 facilities.

8 And so, we find the statements that the gentleman
9 made quite difficult to understand, and we definitely disagree.

10 We would urge your support of Mr. Miller's
11 confirmation.

12 SENATOR PETRIS: You're a statewide officer? Are you
13 President of the group?

14 MR. KELCH: I'm sorry, I'm Vice President of Public
15 Policy.

16 SENATOR PETRIS: Where are you located?

17 MR. KELCH: Here in Sacramento.

18 SENATOR PETRIS: In the past two or three years, have
19 you had complaints from operators in the Bay Area?

20 MR. KELCH: In terms of the residential care
21 facilities?

22 SENATOR PETRIS: Yes.

23 MR. KELCH: No, we have not.

24 SENATOR PETRIS: None at all?

25 MR. KELCH: No.

26 SENATOR PETRIS: I've had a lot of complaints in
27 Oakland about the high-handedness, oppression, arrogance, et
28 cetera, of the Department with respect to certain operators,

1 both in Oakland and San Francisco, accusing them of very
2 arbitrary actions and so forth.

3 That came up in a flurry a few years previously. Mr.
4 Healy came down and had a mass meeting -- I attended it -- with
5 a lot of the operators, and he took a lot of steps to correct
6 that.

7 But now, accordingly to the complaints -- I haven't
8 investigated the complaints, but I have heard them -- there
9 seems to be another round of the same type of thing.

10 None of that has come to your attention as an officer
11 in the Association?

12 MR. KELCH: No, and keep in mind, we only represent
13 residential care facilities for the elderly, so --

14 SENATOR PETRIS: Yes, I understand that. That's only
15 a segment overall.

16 MR. KELCH: Correct.

17 I don't know if it was another type of client groups
18 or not.

19 SENATOR PETRIS: No, this is the elderly that I'm
20 talking about.

21 MR. KELCH: For the elderly, no, I have not, sir.

22 SENATOR PETRIS: Thank you.

23 CHAIRMAN LOCKYER: Is there anyone else that would
24 wish to -- yes, please come forward.

25 MS. FUCANAN: I'm Elsa Fucanan. I'm an operator in
26 the Bay Area for the 17 years. I started my business in 1978,
27 and I'm still operating some facilities.

28 I was not here prepared. I was just invited by the

1 group here in Oroville, but I'm not here against Mr. Miller's
2 confirmation. I am here in favor of it.

3 It's just that I would like to emphasize some concern
4 that's been going on in the Bay Area lately. Since being an
5 operator from 1978, I could see the difference. Like when -- I
6 think it was three years ago when they said the state budget,
7 there was a concern about the state budget, and they start
8 cutting off staff.

9 And Emoryville's district was entirely turned around.
10 Everybody else was new there. And we had new evaluators coming
11 in, they're just giving us a hard time because they're not
12 social workers, they're just street person or no experience in
13 the business, no concern at all for the elderly.

14 And like, for example, they would come to my
15 facility, and like if I'm licensed for six nonambulatory, I
16 would always see to it that I'm below; I have five nonambulatory
17 clients.

18 If she comes, because she doesn't like me, she will
19 say, "You had 17 nonambulatories. You have to relocate all all
20 these 13 others," just without any -- I would appeal, or I would
21 ask for independent contractor to look at this.

22 Usually the case, you send an independent contractor
23 to assess ambulatory and nonambulatory residents if you have a
24 dispute.

25 She would say, "It's denied because the state cannot
26 afford an independent contractor."

27 But since with previous operations, every time I
28 asked for an independent contractor, I'm always right in my

1 judgment. Like if I -- if they come and say, "You have 13," and
2 I say, "I have 5," I have five.

3 And on one different occasion, they said I have nine
4 nonambs. I have always five. I always go beyond what I have --
5 below, to be sure that I won't be in trouble.

6 And one time in my other facility, which is San
7 Ramon, they said, "Oh, you have -- according to hearsay, you
8 have 17 nonambs." So, I asked for an independent contractor,
9 which they did, but that evaluator has to go and meet her for
10 breakfast in some bagel shop. They're not supposed to do that.
11 An independent contractor will just come, and they don't see the
12 others. All she does is just assess of who can get out of the
13 exit doors in case of emergencies. And they didn't do that.
14 They just do what the evaluators tell them, and I think that's
15 not fair.

16 And being in the industry for awhile, I really have
17 concerns about the elderly. You know, I practically work there
18 24 hours everyday.

19 And if I'm such a bad operator since 1978, I should
20 have been closed by now.

21 But this evaluator that doesn't have any experience
22 at all, and she doesn't like me because I drive a Mercedes, or
23 something, and she just thinks that I'm a bad operator.

24 But I'm -- my facilities are my pride, and I would
25 like to invite Mr. Miller, or Martha Lopez to come and visit my
26 facilities to show that I'm very proud.

27 And also for the past year, we've been harassed so
28 much by this evaluator, so I ask help from the President

1 Roundtable with Republicans and Presidential Roundtable, which
2 I'm a member, because I respect the government. And also with
3 the Senate Republicans' Senatorial inner circle, and they said
4 you have to go -- that is on the state level. And since I heard
5 yesterday that I would be talking in front of Senators here, I
6 think this is -- I grabbed the opportunity, because I wasn't
7 really ready, but I'm confirming Mr. Miller.

8 I would like to --

9 CHAIRMAN LOCKYER: There's a chance that two of the
10 ones up here would be --

11 MS. FUCANAN: But I would like him to investigate
12 what's going on in the Bay Area, especially in my facilities.

13 CHAIRMAN LOCKYER: Thank you, ma'am, for your
14 comments.

15 Mr. Miller, I would just concur, and I think you've
16 had sort of a taste of it. You obviously do this all day, every
17 day, for years, and I've had occasion in the past to bring -- it
18 was more in the child care licensing phase of your career than
19 the more recent one, but I've had occasion to bring disputes to
20 your office.

21 I will say that I think you tried to handle them in a
22 fair and expeditious way, but there's a lot of complaints. It
23 just makes you worry a little about the misuse of authority that
24 can occur in lower level bureaucracies. Well, I guess maybe
25 higher level, too, if you look at Watergate.

26 Anyhow, it's bothersome because you hear the
27 quantities.

28 You should, of course, expect people to be defensive,

1 and want to decide that someone on the other side of the table
2 was wrong, but still, there seems to be a lot of it.

3 Senator Petris.

4 SENATOR PETRIS: I just wanted to ask if you'd had
5 complaints in the last couple of years from operators about the
6 Department?

7 MR. MILLER: I have been outside of Licensing for the
8 last couple of years, but other than the Oroville issue, which I
9 am familiar with, I had not heard the issues around the Bay
10 Area.

11 I do know that a couple years ago, there were issues
12 in the Bay Area. I do know that we implemented several things,
13 everything from the Licensing Academy to try to train the staff.

14 There's over 800 licensing program staff throughout
15 the state. It's critical. I know how critical it is to try to
16 get a consistent message to that large body of staff that are
17 going out, knocking on doors everyday.

18 Every once in a while we do get a situation where a
19 licensing evaluator will go beyond their authority.

20 The critical -- the critical part in that process is
21 to try to keep the message out to the providers when that
22 happens is to not take it for a long period of time if they have
23 an issue, but to try to push it through the chain of command.
24 There is a regional manager out there. The reason those
25 positions were established a few years back is so that they
26 would be in the local community, so they could get out and try
27 to deal with those types of issues early on.

28 I've tried many things to have none of those

1 situations occur. I don't know that we will ever get there, but
2 I think there is a system in place that, if we could get the
3 complaints into the proper process, at least they would be dealt
4 will.

5 SENATOR PETRIS: Part of it in my area seems to be
6 pretty bad attitude. Some of the inspectors, or whatever
7 they're called, evaluators, came in with a very hostile attitude
8 from day one. It looked like they'd already written the report
9 before they ever went into the facility.

10 It didn't seem to have a spirit of, "Well, sure,
11 we're the inspectors, but the reason we're doing this is to keep
12 the standards high and help your residents. So, in the process
13 of doing our job, we're really helping you to do your job
14 properly."

15 That used to be the case. But during the time of the
16 complaints that I mentioned, it just didn't seem to happen that
17 way.

18 So, I would urge you to check that out as well.

19 It was 1992 that I was informed about the problems.
20 As I say, we did have an excellent public meeting with Mr. Healy
21 participating personally.

22 In 1992, where were you assigned? What was your
23 position at the time? Were you in this chain of command, or did
24 you come in after?

25 MR. MILLER: I came in after Mr. Healy.

26 SENATOR PETRIS: Yes, I realize that. Who was the
27 Secretary? Was it Mr. Gould?

28 MR. MILLER: Yes.

1 SENATOR PETRIS: It was during his confirmation
2 hearing that some of these things came out, and I had the
3 impression that maybe you were transferred as a result of those
4 complaints in order to tackle them, see what you could do.

5 MR. MILLER: Actually, I was actively involved in
6 trying to deal with those complaints at that time and those
7 issues. I believe at that particular time there was a
8 tremendous amount of issues relating to group homes, and that
9 was the area we were working in.

10 SENATOR PETRIS: That was part of it, that's true.

11 So, your transfer wasn't a direct result of
12 information brought out at the Rules hearings?

13 MR. MILLER: No, sir, it was not.

14 SENATOR PETRIS: Thank you.

15 CHAIRMAN LOCKYER: Willie, did you want to comment?

16 MR. HAUSEY: I'm Willie Hausey.

17 Just a few minutes ago, you had Ovie Smith up here,
18 whom I work for.

19 I think in the time that Russ Gould was going through
20 his confirmation, we had made a lot of the changes within the
21 law.

22 Providers, it's a tough thing for them to go in for
23 new changes. You made changes, 13 in one year. No money.

24 They saw the license folk coming out to their homes,
25 telling them what to do, and they were objecting to it. So, at
26 least they had one thing that they could turn to, and that was a
27 Member of the Legislature that represented them, saying, "It's
28 these folks are coming down on me."

1 They was not. I represent those folks. They were
2 really, really up against making a change that was going to cost
3 them dollars.

4 So, I can sit here and tell you, Mr. Miller has been
5 fair. He carried out his job fully. If anybody needs to be
6 confirmed in the job, it's him.

7 And there is no fault within what those people were
8 trying to do. They were trying to do something that you had put
9 in place, but didn't put the necessary tools to carry it out,
10 and that's money. You keep passing laws asking people to do
11 thing without putting dollars with it.

12 And in San Francisco, we have had a hell of a time
13 trying to meet regulations because the homes are old. They
14 don't meet any fire standards, so they've made how many waivers
15 in San Francisco.

16 But I think that overall, we've done a good job, and
17 the Department have worked closely with us. And that's why
18 we're here. If it had been the other way, I would have been to
19 each and every one of your saying, "Please don't confirm this
20 man because he's bad for us."

21 But he is good for us, and I think you should confirm
22 him.

23 My closing remarks. Thank you.

24 CHAIRMAN LOCKYER: Mr. Miller, let's talk about a
25 couple of different areas. I'm not sure exactly what falls in
26 your immediate purview or not.

27 The automation computer projects, I guess the
28 Department is currently involved in four of those that run up a

1 pretty substantial financial commitment, a billion dollars or
2 so, from various sources.

3 We read stories, and we have auditor reports and
4 others, that are very critical of the state's effort to
5 implement these new computer systems.

6 Are these programs going to be directly under your
7 auspices in the Department?

8 MR. MILLER: They are. There is a Deputy Director in
9 charge of those particular programs, but all the programs --

10 CHAIRMAN LOCKYER: As Chief, they would be --

11 MR. MILLER: Yes, they would be.

12 CHAIRMAN LOCKYER: -- reporting to you about them?

13 MR. MILLER: That's correct.

14 CHAIRMAN LOCKYER: Am I right in saying that there
15 are about four?

16 MR. MILLER: There four major projects.

17 CHAIRMAN LOCKYER: Some little ones, too?

18 MR. MILLER: Yes, there are.

19 CHAIRMAN LOCKYER: I think it's the Child Welfare
20 one, if my memory serves me correct, that seems to be the
21 furthest behind, but there're lots of delays and cost overruns
22 associated with all of these.

23 What's going on?

24 MR. MILLER: Probably the one that was most discussed
25 in the Legislature was SAWS. It was the Statewide Automated
26 Welfare System.

27 As we end the day, we actually have -- in San Joaquin
28 County we have the first county that came up on SAWS, and on

1 interim system SAWS, so we have our first success today. I was
2 called, and it did work. So, they have a living, breathing
3 county that's up on the Statewide Automated Welfare System, the
4 interim system.

5 There'll be 14 counties that come up on that
6 particular system that will provide data that will allow us to
7 make final decisions on the statewide SAWS implementation.

8 They are -- they're extremely complex projects. The
9 SAWS project, for example, over a 12-year period, excluding Los
10 Angeles County, is over \$700 million for one time and ongoing
11 operating costs.

12 It's a project that requires getting federal
13 approval on each step as you go, and getting legislative
14 approval on any deviation.

15 It requires working with the counties, because the
16 end user on these systems are the county workers that are
17 sitting there at a desk, actually using the equipment. So, it
18 is absolutely essential that you have the buy-in from the
19 counties that the system is going to provide the product that
20 they need.

21 So, they are complex systems. I think that the only
22 thing that I can tell you is that we, when I first came into
23 this job a few months back, recognized the complexity of these
24 systems, and quickly moved to request the Health and Welfare
25 Agency to actually put up an oversight task force that would
26 include: myself; the Deputy Director; the Deputy Directors of
27 Information Technology and admin. within the Department; the
28 Department of Finance, both the OIT side, the Office of

1 Information Technology side, and the budget side; and the
2 Department of General Services. Those are all the key --

3 CHAIRMAN LOCKYER: When was that set up?

4 MR. MILLER: That was set up about seven months ago,
5 and we have continuously, using SAWS as an example, looked at
6 SAWS, tried to identify two years down the road, when we try to
7 implement SAWS statewide, what are the roadblocks that we can
8 project we're going to have to deal with.

9 And I think just in any major project, that's going
0 to be to make sure that you have a competitive bid process,
1 something that puts different vendors on an equal playing field
2 in order to compete for the statewide system, a process by which
3 we could make sure that the product that we were going to bid
4 statewide would, in fact, do the job that it was supposed to do.
5 that is interim SAWS; that is the 14 counties we're bringing up,
6 pulling data from that so that we can answer questions with hard
7 data, as opposed to speculation.

8 And so, we work these projects through the system. I
9 would say that SAWS right now, from an administrative oversight
0 view, is in good shape simply because we have tried to figure
1 out those particular things. And I feel confident that we have
2 a process in place that will allow us to get the end job, not
3 quickly, and it's going to require continuous, not just once a
4 year but continuous, monitoring to make sure that we are, in
5 fact, keeping on schedule with that particular project.

6 The SACS project, which is, you know, is a major
7 project for Child Support Enforcement, is also a project that
8 seems to be staying pretty much on schedule, and we've just

1 started the heavy discussion around working that project down
2 through its lifetime. So, that project is in pretty good shape.

3 The Child Welfare Services Case Management system, we
4 have been involved with, and we are at this point in a conflict,
5 I guess is the only way I can state it, or in disagreement,
6 anyway, with the vendor on the value, or the difference between
7 the SPR, the planned that was approved by the Department of
8 Finance during the budget cycle, the difference between that
9 approval, which is a product that is jointly developed between
10 the vendor and the state, and what the vendor now believes
11 shortly after the SPR, the vendor now believes the value of that
12 product is. That's requiring some intense negotiations.

13 The bottom line objective is to get a Child Welfare
14 Services Case Management system on the desk of workers statewide
15 in the county, and to do that within budget. And if we can't
16 work through that process, then it's going to be an issue that
17 we will have before various legislative bodies, discussing, and
18 trying to deal with it.

19 But it is absolutely probably the most complex area
20 that -- to manage and keep in touch with.

21 CHAIRMAN LOCKYER: What's the information? What
22 would happen? What would the caseworker be working with now, a
23 bunch of pieces of paper in a file?

24 MR. MILLER: Yeah. It varies significantly from
25 county to county, and it runs from that to some information
26 technology systems that are in place in the counties.

27 But California, unfortunately, does not have a
28 statewide Child Welfare system that will actually track foster

1 kids, and the history around those particular foster kids, and
2 provide not only the administration but the legislative body's
3 information that gives you an ability to adequately tell what's
4 happening to the foster children.

5 The CWS system is the product that we were looking to
6 to fix that.

7 CHAIRMAN LOCKYER: But SAWS and the others seem to be
8 pretty much on schedule and on budget?

9 MR. MILLER: I'm not sure that you can ever figure
10 out what "on budget" means. So, I've been diligently trying to
11 do that for 11 months, but based on the SPRs, and, you know,
12 that's the document that we bring before the Legislature through
13 the budget process, is that SAWS is in fact now on target, and
14 it's within the SPR.

15 The latest effort was to get approval for some
16 demonstration projects so that we could run the Napas, which is
17 the software, to allow us to run the software that is running on
18 ISAWS, on the interim SAWS system, where the county came up
19 today. But to allow that software package to run on different
20 platforms, and that would be piloted, and we received approval
21 through the legislative process to fund that. That would allow
22 for a much more competitive, in fact an absolutely competitive,
23 playing field for more than one vendor to compete for a piece of
24 the SAWS project, and yet run a single -- a single maintenance
25 software package for the State of California.

26 CHAIRMAN LOCKYER: It seems like there may be some
27 other witnesses, so let me call of this lady to help us.

28 MS. LUNA: My name is Erlinda Luna. I'm an

1 administrator of the biggest facility in Oroville with 49 beds.
2 There's also one complainant of that subject complained.

3 I'm not a care provider, but I'm supporting
4 Mr. Miller's confirmation, because being an administrator of
5 that facility, I see -- I saw, you know, the first meeting we
6 had with Assemblyman Richter, Mr. Miller was there, Martha Lopez
7 was there. And he keeps tabs on that. In fact, there was a
8 follow-up letter by Martha Lopez, Deputy Director of Community
9 Care Licensing.

10 And I think Mr. Miller will be doing and focus his
11 attention on this Chico district -- this Oroville is under the
12 Chico district, which is, Oroville is a part of that district.

13 And I just want to make comments, please, if
14 Mr. Miller will be confirmed as this position, please, make sure
15 that the Chico district will be taken care of, because I have
16 been intimidated by the -- we call it LPA, the Licensing Program
17 Analyst, they call the evaluators. I didn't have any voice to
18 even explain to them the side of the facility, just make all the
19 allegations: substance shaded, substance shaded. Without
20 being, you know, without doing his job on doing investigation.

21 So now that I was encouraged to join at this meeting
22 and Mr. Miller was there. Martha Lopez was there. I think that
23 some good results will be -- will happen in the future.

24 So, I'm supporting Mr. Miller being administrator of
25 that facility, the largest facility in Oroville, the third
26 largest in Butte County.

27 Thank you.

28 CHAIRMAN LOCKYER: Thank you very much.

1 Mr. Miller, what's the toughest decision you had to
2 make in the last year?

3 MR. MILLER: In the last year?

4 CHAIRMAN LOCKYER: Yes.

5 MR. MILLER: The toughest decision was probably to
6 postpone taking my grandkids to Disneyland. I had to do that
7 because of actually a hearing on information technology. That's
8 the one that had the most repercussions, anyway.

9 CHAIRMAN LOCKYER: How about the work?

10 MR. MILLER: The work, I think the toughest decision
11 was a series of decisions around the SAWS project, and how we
12 could move the project to what I perceived, anyway, as being a
13 no-win situation, because SAWS was headed to a single system, or
14 to a single vendor bidder situation once we got through with the
15 ISAWS project.

16 I do not believe that you can have, in the State of
17 California, an \$800 million project that ends up with a single
18 winner. I think we have enough history on this particular
19 project over the last 15 years, through several efforts, to know
20 that if we get to that point, there will be enough protests that
21 the losing bidders will never allow the system to be
22 implemented.

23 So, the series of decisions associated with building
24 a strategy and designing an alternative demonstration approach,
25 allowing the software to operate on multiple platforms, was the
26 toughest or most draining set of decision processes we've been
27 through. And that required pulling in resources, people who
28 knew a lot more about this than I did, and learning from them

1 the details around the technical parts of the information
2 technology.

3 CHAIRMAN LOCKYER: And just before that, it was Adult
4 Services, was that the prior position?

5 MR. MILLER: Yes, Adult Services.

6 CHAIRMAN LOCKYER: Does anything stand out in your
7 mind from that period that was tough, a hard decision to make,
8 controversy?

9 MR. MILLER: Well, I think probably in the IHSS
10 program, the time I was there, we had taken a 100 percent
11 generally funded program, the In-Home Supportive Services
12 program, and we had modified that to a Title 19 funded program.

13 So, in meeting the federal definition of eligibility
14 for a client group, then we had to then make that transition of
15 taking a percentage, or a portion of the IHSS population, and
16 qualifying them for Title 19 funding.

17 That was and still is an ongoing process. We're at
18 about, for the Department, around 60 percent, and we had
19 projected that about 68 percent of that population would be
20 Title 19 eligible for federal funding.

21 And so, that process, though, created a threat. It
22 created a concern, anyway, to the In-Home Supportive Services
23 industry, in that they did not want In-Home Supportive Services
24 to be perceived as a medical model. So, funding that through
25 Title 19, and putting it into the -- which involved the
26 Department of Health Services, left in the community's mind that
27 we were moving that towards a medical model, which we were not.
28 So, it required a lot of effort to reassure that community, or

1 to work with the community, to try to explain that the IHSDS
2 program and the PCSP, Personal Care Services Program under Title
3 19, was the same program.

4 CHAIRMAN LOCKYER: The Disability Evaluation phase,
5 was that the one before that?

6 MR. MILLER: Yes. Actually, I was in that as Interim
7 Deputy Director. I basically came in and did, after Community
8 Care Licensing, did a management review of that particular
9 program.

10 I think the thing that sticks in my mind the most
11 there is the fact that we had a 50,000 case backlog. They
12 referred to it as shelved cases. And that meant that 50,000
13 people that could have been eligible for disability benefits,
14 and some portion that weren't eligible for disability benefits
15 and didn't know, but there were 50,000 cases laying there that
16 were not being process.

17 That was not an acceptable situation. It required
18 that we get much more aggressive with the federal government and
19 the way they budget that program. It's 100 percent federally
20 funded program, that we basically contract with the federal
21 government to perform.

22 When we're not doing it well, though, the State of
23 California takes the heat, if you want to call it that; the
24 federal government doesn't.

25 We did get much more aggressive in the budgeting
26 process with them, so that we could get resources, including
27 overtime dollars. I am happy to say that that backlog, as of
28 last week, because, very frankly, we were trying to get a

1 picture of someone pulling the last case off the shelf, but as
2 of last week, there were 100 cases left in that backlog of what
3 we called shelved cases.

4 CHAIRMAN LOCKYER: Is there a new backlog?

5 MR. MILLER: No, there is not.

6 That's taken of the last 11 months. I didn't mean to
7 infer that that happened overnight.

8 CHAIRMAN LOCKYER: No, I understand.

9 This is in a policy area in which you've chosen to
10 spend most of your career years. What do you like about it?

11 MR. MILLER: What I like about it is the human
12 services side of the program. I think that -- and I'll pick
13 children, because I normally pick the elderly. As I get grayer
14 and grayer, it's of more and more interest.

15 But I think I have an absolute belief that if you've
16 going to impact our society, that you're going to have to get to
17 kids early in life. And that means to me that you need to not
18 spend as many dollars on out of home care, but find ways that
19 you can in fact divert resources to both the child, and giving
20 the parent, who in our society now oftentimes does not have the
21 skills to be a parent, but to divert some resources to both that
22 child and to the parent to see if you can build a family
23 structure.

24 You can call it family preservation; you can call it
25 wrap around. You can call it a number of things, but I think
26 that if we could somehow get or have an impact on the family
27 structure through either providing to the natural parents some
28 resources to make them a capable parent, or, if we have to use

1 the foster care system, to make sure that the foster parent in
2 fact has the skills to provide a home life and family
3 environment so that the child feels that they have some worth.
4 Then I think that we can, in the long term, impact society.

5 The ability to work in that environment and the
6 ability to contribute to it, particularly in this job, is both
7 challenging to me, and it's something that I absolutely want to
8 do. So therefore, that's why I'm interested.

9 CHAIRMAN LOCKYER: For someone who has
10 responsibilities that are in many ways, I guess, technocratic,
11 it's nice to pierce that and find the human being that's trying
12 to solve other human beings' problems.

13 MR. MILLER: Thank you.

14 CHAIRMAN LOCKYER: Other questions?

15 Is there anyone else? Yes, ma'am.

16 MS. RENOVILLA: My name is Nimia Renovilla. I'm a
17 registered nurse, and I worked for 17 years in the intensive
18 care nursery at Children's Hospital in Oakland.

19 And I strongly support Mr. Miller's confirmation.
20 But since you -- up until now, I have been trying to stay in the
21 background, because I didn't -- I didn't come here really
22 prepared. But since you mentioned something about the children,
23 that's something very close to my heart.

24 I have been a care provider for children who were
25 severely handicapped, and I started as a small family home and I
26 graduated to a group home.

27 But later on, I realized that I was really barking up
28 the wrong tree, so to speak, because initially, from the very

1 beginning, when I wanted to start a home, I was really eyeing on
2 what we call the ICS-DDN home, but at that time, the license was
3 frozen because they said -- here, in Sacramento, because they
4 said they were legislating it. And I was advised from somebody
5 in the Regional Center to apply for any license so that I could
6 just get into the system, and then -- so that I will get to know
7 how to work with the network, and so on.

8 But I think it was a wrong. Now I realize, seven
9 years later, it was a wrong move because when I got my license
10 as small family home, I started -- it slowly creeped, slowly but
11 surely, through the system that here is an R.N. who specializes
12 with very, very severely handicapped children. And I got
13 nothing but really, really handicapped children.

14 My home, so to speak, was not really prepared, let
15 alone money-wise.

16 And another thing, and so I had to cope with all
17 that, with all the regulations that went with it. And in
18 trying to maintain the home, I kept trying to find ways and
19 means how I could get more money so that I can employ the right
20 kinds of people, but it really didn't work, you know.

21 But I just want to say to Mr. Miller that since
22 you're saying something about children, because I also do
23 believe that the first and foremost is for parents -- for
24 children and parents to be together. And my purpose at that
25 time was to have some kind of a bridge, to bridge the gap
26 between the hospital and the home, because these children that I
27 took care of were children who could not be taken care of by
28 their parents. They were very, very involved. But I thought

1 that if, by having a home like that, and the parents would be
2 slowly introduced into their care, I could have done something
3 for the community.

4 And I just think -- I just hope that maybe in the
5 future, other home providers who would like to provide care for
6 children would have more support. And if your office deemed it
7 necessary to inform the care provider with the help of the
8 Regional Center, that maybe it is not the kind of license.
9 Maybe that the home provider should really apply for a different
10 kind of license, if that is what they want they want to do.

11 But my trying to hold onto the home under, first, as
12 a small family home, then as a group home, was detrimental to me
13 and to the business.

14 CHAIRMAN LOCKYER: Thank you for your comments.

15 Any questions from Members? Are we ready to close on
16 this item?

17 Do we have a motion?

18 SENATOR CRAVEN: Move.

19 CHAIRMAN LOCKYER: We have a motion by Senator Craven
20 to recommend confirmation to the Senate.

21 Call the roll.

22 SECRETARY WEBB: Senator Ayala.

23 SENATOR AYALA: Aye.

24 SECRETARY WEBB: Ayala Aye. Senator Beverly.

25 SENATOR BEVERLY: Aye.

26 SECRETARY WEBB: Beverly Aye. Senator Petris.

27 SENATOR PETRIS: Aye.

28 SECRETARY WEBB: Petris Aye. Senator Craven.

1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Craven Aye. Senator Lockyer.

3 CHAIRMAN LOCKYER: Aye.

4 SECRETARY WEBB: Five to zero.

5 CHAIRMAN LOCKYER: Members of the Committee, I think
6 we have about 45 minutes' work. If I push us, I think we might
7 make it. If there are time problems, if people will let me
8 know, we can maybe think of something else to do.

9 SENATOR PETRIS: Mr. Chairman, I have a bit of a time
10 problem. I have to go back to the district.

11 The other is, I've had just this afternoon some
12 material relating to not the next one, but the one after,
13 Ms. Schafer. In order to be able to study that material and
14 perhaps get more information, I as going to request that we go
15 over a couple of weeks, if possible. I wanted to do it earlier
16 so that she wouldn't be waiting around all afternoon.

17 CHAIRMAN LOCKYER: What's our deadline here? Do we
18 have a while?

19 MS. MICHEL: We would have to do it during August.

20 SENATOR PETRIS: It'll be in August, if that's okay.

21 CHAIRMAN LOCKYER: Well, it's your right to request
22 at least a week, and there's no reason, probably, that we can't
23 take two.

24 MS. MICHEL: I'd say two, because we have five people
25 already scheduled next week.

26 SENATOR PETRIS: Yes, next week seemed to be a little
27 crowded, as I understand. So, I would have asked for one week,
28 but in view of that, I will ask for two.

1 CHAIRMAN LOCKYER: We'll put the matter over.

2 If there are people here for Jacqueline Schafer's
3 confirmation discussion, I believe that will be two weeks from
4 today. I apologize for any inconvenience to people.

5 Mr. Prunty is the next person up.

6 Hi, sir.

7 MR. PRUNTY: How do you do?

8 CHAIRMAN LOCKYER: You've kind of heard what we ask
9 about, but maybe you'll begin, tell us about you, and why you
10 like this position, why you think you should be confirmed.

11 MR. PRUNTY: Well, Senator, thank you for the time.

12 I've been an employee of this Department of
13 Corrections for 23 years. In that period of time, I've had a
14 succession of assignments, I think, that have prepared me for
15 this one.

16 I began my career at Folsom in 1971 as a correctional
17 officer. In the succeeding years, I promoted through the
18 uniformed ranks. I had the opportunity to serve as the Chief of
19 Training Services for this Department for a period of time. I
20 was Chief Deputy Warden at the Richard J. Donovan Correctional
21 Facility for three years, and I was also appointed as the Warden
22 at Sierra Conservation Center in 1992.

23 In 1993, after having been confirmed by the Senate, I
24 made a decision to move to Calipatria State Prison, where I am
25 currently assigned. I'd like to think that the institution
26 operates a little bit better since I've been there, and I'd like
27 the opportunity to continue with that.

28 CHAIRMAN LOCKYER: Yes, Senator Ayala.

1 SENATOR AYALA: Your first employment with the state
2 was in Tracy, and you started as a sergeant?

3 MR. PRUNTY: No, sir.

4 My first department was as a correctional officer a
5 Folsom.

6 SENATOR AYALA: At Folsom, I see. I have '74-81, you
7 were sergeant with the Department of Corrections, Tracy.

8 MR. PRUNTY: I was a sergeant from 1974 til 1981, and
9 I was a lieutenant from 1981 to 1985, yes.

10 SENATOR AYALA: Thank you.

11 CHAIRMAN LOCKYER: I'm reviewing letters. There's a
12 long list of letters of support that we've received from sort of
13 all walks: business, labor, community leaders, and so on.

14 Let me ask if there is anyone present who would wish
15 to perhaps make any brief comment on either support or
16 opposition?

17 MR. MOSQUEDA: Thank you, Mr. Chairman and Committee.

18 I'm here to support Mr. Bud Prunty. I've known him
19 about a good part of 15-20 years, and I did work with him when
20 he worked at --

21 CHAIRMAN LOCKYER: Tell us your name.

22 MR. MOSQUEDA: George Mosqueda. I'm a Program
23 Administrator for the Department of Corrections.

24 CHAIRMAN LOCKYER: Where?

25 MR. MOSQUEDA: Here in Sacramento.

26 And I've worked with Mr. Prunty on and off for the
27 good part of 20 years.

28 When we first met, he was a correctional sergeant.

1 And Mr. Prunty's the kind of person that leaves a long-lasting
2 impression. In my mind, it was a positive one.

3 I'm here to tell this Committee today a few things
4 that have impressed me about Mr. Prunty, and I think that it's
5 something that this Committee should be well aware of.

6 As I said previously, I've known him for a good part
7 of 20 years. I've known Mr. Prunty's management style to be
8 firm but fair. And I underscored the word "fair" on my notes,
9 because that's the kind of person he is. And you have to work
10 with somebody, next to him, and dealing with adverse conditions
11 with inmates, and sometimes staff, to understand what I mean by
12 fair when it comes to Bud Prunty, because he is the person that
13 will insist on fairness.

14 Another thing that stands out is that he wouldn't ask
15 any employee to do something that he was not willing to do
16 himself. Even as the Warden, he would still do things to show
17 his subordinates and fellow workers that he is capable of doing
18 any job that is asked of him.

19 I've known Bud Prunty since he was a correctional
20 sergeant, correctional lieutenant, correctional captain, and
21 associate warden here in Sacramento in charge of training.

22 I've noticed his leadership skills to be outstanding,
23 integrity, honesty, dedication to the job, and loyalty to the
24 Department of Corrections and the State of California.

25 To me, I have never seen anyone with those
26 characteristics that stand out and do it day in and day out.
27 When you work with the Department of Corrections, it's got some
28 38,000 employees. It's hard to go along in that Department

1 without making a few bumps in the road, but Bud Prunty, to me,
2 has done the best that any administrator can do.

3 CHAIRMAN LOCKYER: Thank you, sir.

4 Others?

5 MR. NALEWAJA: I'm Vince Nalewaja. I am father of a
6 correctional officer at the Calipatria Prison. He's been there
7 13 months, and he could not get off his duty to be up here, so
8 he asked me if I would appear.

9 So, Mr. Chairman and Members of the Committee, I'll
10 read his letter.

11 I, Michael Nalewaja, my son, is a member of the
12 CCPOA, and I am in favor of the confirmation of K.W. Prunty as
13 Warden of Calipatria State Prison.

14 Also, I have worked with Mr. Prunty for 13 months,
15 and have met with him face to face via his monthly Warden
16 meetings every month.

17 I have asked Warden Prunty for his help on at least
18 four major problems at our prison. Warden Prunty was fair,
19 logical, and very fast acting in correcting these problems.

20 The problems ranged from natural swap form changes,
21 to holiday time off, holiday policy changes, to an unfair
22 treatment of a supervisor. In each case, Warden Prunty
23 listened, took notes, asked questions, and corrected the
24 problems within a week.

25 I have witnessed other correctional officers who are
26 in the CCPOA. They get their problems correctly by simply
27 explaining their problems to the Warden. These problems are
28 things like personnel department was not putting a spouse on

1 insurance coverage or transfer problems. Warden Prunty has
2 always been so eager to help and very precise in his follow up.

3 Also at these monthly updates, Warden Prunty would
4 take the time to relate his first-hand experience as a
5 correctional officer. Warden Prunty started from the bottom.
6 He was an entry level correctional officer and can relate first-
7 hand to our problems.

8 This insight, his precision, his willingness to work
9 hard, his willingness to meet face to face with entry level
10 staff, his logic, his high integrity, and his fairness make K.W.
11 Prunty an outstanding Warden.

12 Signed by my son, Mike.

13 CHAIRMAN LOCKYER: All right, thank you, sir.

14 MR. LOZANO: Thank you, Mr. Chairman, Members of the
15 Committee.

16 My name is Hector Lozano. That's L-o-z-a-n-o, for
17 the record. I'm a Correctional Counselor II at the Sierra
18 Conservation Center, which is the previous institution that
19 Warden Prunty was assigned to.

20 I'm here today representing the Chicano Correctional
21 Workers Association, Jamestown Chapter.

22 In case it hasn't been mentioned, the Association is
23 concerned with the hiring, retention and promotion of minorities
24 and women.

25 CHAIRMAN LOCKYER: And he was a captain there.

26 MR. LOZANO: He was a captain there; that's correct.

27 My particular association with Mr. Prunty started --
28 well, it started with Mr. Mosqueda's. I started as an officer.

1 Mr. Mosqueda was a sergeant, and Mr. Prunty was a lieutenant.
2 Then, of course, he went to Jamestown as a captain, and then
3 returned as a warden.

4 I'd like just to make my comments brief and echo, if
5 I can, without actually echoing, what the other two speakers
6 have mentioned.

7 Nevertheless, I hope that my brief comments are still
8 regarded as significant; significant because this represents
9 CCWA's continued support of the Department's finest. And I can
10 say that Mr. Prunty is definitely among the Department's finest.

11 I believe that it also represents, that this process
12 represents, the Legislature's commitment, the Director's
13 commitment, and Mr. Prunty's commitment to ensure that the
14 California prisons are staffed with a good, balanced,
15 well-qualified work force that is representative of the entire
16 California labor force.

17 If I may, suffice it to say that in the area of
18 affirmative action, promotions, and hiring and so forth,
19 Mr. Prunty receives an "A" grade, so to speak, in our opinion.

20 My experience with him, observing him in the
21 different opportunities I've had to observe him and work with
22 him, is that he is a very fair individual, and that is a very
23 positive attribute in this business, because every time you turn
24 around, someone is complaining about someone being unfair. And
25 Mr. Prunty, on the other hand, is very fair. He demonstrated
26 this ability as a lieutenant that I was able to observe
27 first-hand, as a captain that I was able to observe first-hand,
28 and then, of course, as a warden. I doubt that he's changed

1 much in the last 16 months.

2 That's why our Jamestown Chapter is still in
3 unalterable support of his confirmation, and we'd just like to
4 urge this Committee that it would nominate Mr. Prunty to the
5 full Senate for full confirmation.

6 Thank you.

7 CHAIRMAN LOCKYER: Thank you.

8 MR. WOODS: Senator Lockyer and Members, I'm Marion
9 Woods again with the NAACP.

10 The NAACP's concern about the prisons and
11 administration in California is borne out of the fact that a
12 large number of African-Americans are housed therein. And we
13 are interested that the administration, and the wardens, and the
14 people who run the prisons do so with the efficiency,
15 effectiveness, and equitably.

16 Kingston Prunty, we have found, meets all of those
17 tests. We commend --

18 CHAIRMAN LOCKYER: How did you measure that? What
19 did you do to find that out?

20 MR. WOODS: I went down and spent a day with him, and
21 a day in the prison. I talked to convicts; I talked to guards,
22 correctional officers. I've been to 16 prisons throughout the
23 State of California, and he ranks among the best administrators
24 that I've been able to see.

25 CHAIRMAN LOCKYER: Are there any of them, do you
26 think, that shouldn't be there?

27 MR. WOODS: I think so.

28 CHAIRMAN LOCKYER: Tell me privately sometime.

1 MR. WOODS: I will.

2 CHAIRMAN LOCKYER: Unless you want to do it for the
3 record.

4 MR. WOODS: No, I would not.

5 I can commend him without reservations.

6 CHAIRMAN LOCKYER: Yes, sir.

7 MR. WARE: Mr. Chairman and Members, I'm Jim Ware,
8 Association of Black Correctional Workers.

9 We strongly support Mr. Prunty, and we find no fault
10 in him.

11 CHAIRMAN LOCKYER: Thank you.

12 Please.

13 MR. SEARCY: Frank Searcy, President of the Chicano
14 Correctional Workers Association.

15 Thank you very much for allowing me to be here this
16 afternoon.

17 This Association strongly endorses Mr. Prunty for
18 Warden at Calipatria State Prison.

19 I've known Mr. Prunty also for several years, and he,
20 throughout the association, has never, I don't think, ever heard
21 any negative things about Mr. Prunty. Anything that they have
22 heard has been in a positive manner.

23 Like has been voiced already, he has dealt with
24 problems on varying issues in the institutions, and he always
25 deals with it fairly, consistent.

26 Also, Mr. Denny Paramor, the Calipatria State Prison
27 Chapter of the Chicano Correctional Workers Association, was
28 here. Unfortunately, he had to leave to catch a flight back to

1 Calipatria, and he asked me to share that their chapter also
2 strongly endorses Mr. Prunty.

3 Mr. Paramor is also a city council member of
4 Calipatria City Council, and he also wanted to share that the
5 City Council of Calipatria also supports Mr. Prunty for Warden.

6 So with that, thank you very much.

7 CHAIRMAN LOCKYER: Thank you, sir.

8 MR. FALLON: Yes, my name is Duncan Fallon.

9 Mr. Prunty is my direct supervisor and has been since
10 1992 at Sierra Conservation Center, and my direct supervisor now
11 at Calipatria State Prison.

12 I work with him daily, one to one. He is very
13 committed to his job and to the people of California.

14 I'd like to ask you to honor his commitment and
15 confirm him as Warden of Calipatria State Prison.

16 CHAIRMAN LOCKYER: Thank you.

17 MR. BAILEY: My name is Richard Bailey. I'm
18 President of the local chapter of CSEA at Calipatria State
19 Prison.

20 I have the opportunity to meet with Mr. Prunty every
21 month, that he's impressed several things that he wants:
22 credibility, accountability, and respectability, and you've got
23 them. He gives everybody that -- we've come to him with
24 problems, he listens to their problems.

25 He believes firmly in participatory management. He
26 holds his managers accountable, that we can have meetings that
27 he's instituted with lesser people, you know, lesser managers, I
28 guess, below him in the chain of command, where we can go in and

1 we can talk, and we can solve problems. And I --

2 CHAIRMAN LOCKYER: You mean you can actually see the
3 difference in participatory management? You can see the
4 differences?

5 MR. BAILEY: Yes, sir, I can.

6 Many times in a prison setting, being a paramilitary,
7 that it's very easy to abuse power. Mr. Prunty stresses
8 communication, and we've had very few problems at CSEA. And
9 those that we have had, we've been able to work out. And that's
10 due -- you know, we're wholeheartedly behind confirming Mr.
11 Prunty as Warden.

12 CHAIRMAN LOCKYER: Thank you, sir.

13 I may, if I just could insert this brief comment.

14 Since it is a quasi-military or paramilitary
15 structure, it seems to me that there are some potential problems
16 that run with that culture, and I hear comments from time to
17 time that the labor-management relationships might be skewed
18 toward sort of command structure rather than a flatter, more
19 involved approach to things, with employees being respected and
20 able to participate.

21 It doesn't sound like Mr. Prunty's the person, but
22 when I get a clear view of one of the warden appointees of the
23 old school, they should expect not to be confirmed.

24 Now, that's not the case before us, but it is a
25 problem with this particular culture that I think we need to
26 keep an eye on.

27 Do we have some more comments? Yes, quickly, if you
28 will.

1 MS. BIAGINI: My name is Patricia Biagini, and I'm
2 here as Co-Chairperson for the Calipatria State Prison Women's
3 Liaison Council.

4 As you're aware, the Women's Liaison Council is a
5 state-mandated program, initiated in 1979 to lend an open forum
6 of communication between staff and the Director of Corrections.
7 This program includes women in trades share the path training
8 and development programs, mentoring upward mobility and
9 statewide training.

10 Mr. Prunty was the recent recipient of the
11 Departmental Women's Liaison Council Correctional
12 Administrator's Recognition Award. This was presented to him
13 because of his demonstrated and continuing support of the
14 women's programs.

15 When concerns and issues are presented to the
16 Council, such as safety issues, he assists us in problem solving
17 these issues. For example, as officers expressed concern
18 regarding questionable, suggestive and violent movies being
19 shown to the inmate population, this issue was resolved when
20 Mr. Prunty came to one of our meetings and assisted in
21 suggesting that we now participate in the movie review system.
22 This is also being suggested on a statewide basis.

23 Additionally, when concerns are presented to
24 Mr. Prunty, such as custody versus noncustody concepts within
25 the institution, he has offered direction and professionalism
26 through his open forum monthly meetings for all staff to attend.
27 He deals with employees' concerns on an individual basis, in a
28 firm yet fair manner, and has established training programs to

1 emphasize team work in creating a safer and more aware
2 environment within the institutional setting for all staff.

3 I'm sure you're aware Mr. Prunty was selected from
4 numerous candidates and is recognized as the Departmental
5 trainer for women, for wardens, and chief deputy wardens in
6 ethics and ethical behavior for the Department of Corrections
7 today. He affords his training, background, and expertise to
8 the staff at Calipatria by his personal demeanor and dedicated
9 involvement to the training at the local level.

10 On a personal note, as a state employee for the past
11 15 years, and my current assignment is a Personal Specialist,
12 Mr. Prunty was assigned to an area that was in great need of
13 professional direction, leadership, and commitment with an
14 understanding and knowledgeable attitude. He has given that to
15 Calipatria State Prison and its staff, which is evidenced by the
16 way staff now responds in these open meetings.

17 CHAIRMAN LOCKYER: Thank you very much.

18 MR. NOVEY: Senator Lockyer, Chairman of the
19 Committee, Committee Members, Don Novey representing CCPOA, the
20 California Correctional Peace Officers Association. We'll make
21 this short. It's been a long day for all of you.

22 We're not here to oppose Bud Prunty as an
23 organization. And I hear all these people up here testifying,
24 "I worked with Bud Prunty here," or, "I worked with him later on
25 in our career."

26 Bud Prunty and I started out together in the Hole at
27 Folsom Prison, 23 years ago. We're the ones that had Charlie
28 Manson throw slop on us, the Aryan Brotherhood, the Black

1 Guerrilla Family, the Mexican Mafia. So, Bud and I go back
2 pretty far in history. Unfortunately, he went to management and
3 I went to labor, and I think we've both been fairly successful
4 in our careers.

5 What we're here to do today as an organization is
6 maybe help Mr. Prunty. And as an organization, I'd like to let
7 you know that we vehemently opposed the opening of Calipatria
8 State Prison.

9 When I walked on the yard of that prison, it was 103
10 degrees. Humidity was 95 percent, and my face and whole body
11 was covered with white flies, just walking across the yard. And
12 the officers have to work in that environment, let alone the
13 inmates living in it.

14 The prison was designed for medium custody inmates.
15 Mr. Prunty has inherited a prison that had over 300 and some
16 assaults in its first year. I dare say that Ruben Ayala
17 wouldn't tolerate that in Chino Valley.

18 It was somewhat of an embarrassment. The former
19 warden was removed, and he's now elsewhere in the State of
20 California. And I don't know if that would have brought other
21 things to fruition.

22 I think Bud Prunty needs a psychological screening
23 for volunteering to go to that facility.

24 [Laughter.]

25 MR. NOVEY: Bud had a beautiful institution at
26 Sierra, well respected by the Association's membership, and we
27 have some difficult problems now, and I think they're basically
28 labor. And hopefully, we can work them out and make it a better

1 facility.

2 It's tough for the officers. At best, we probably
3 average an assault there every third day now, and it's been cut
4 down since the movement of Mr. Prunty in there as Warden, and
5 our organization would be the first to acknowledge that.

6 What we'd like to do is bring to your attention today
7 some of the problems we are having, and we'd like to bring those
8 to a resolve. With that in mind, I'd now like to introduce Mr.
9 Dave Moschetti, our chief job steward there and President.

10 MR. MOSCHETTI: I'm the Chapter President at
11 Calipatria State Prison. I'd like to thank you for permitting
12 time to speak.

13 Although we're taking a neutral position of opposing
14 Mr. Prunty, there is some areas of concern that we have.

15 CHAIRMAN LOCKYER: What are they?

16 MR. MOSCHETTI: I'm going to be brief. I'm ready to
17 go home.

18 We generated a package. I believe you have copies of
19 them. There's three things that stuck out in my mind.

20 I originally came from Folsom. And when I worked at
21 Folsom, it was going through some bad times. A lot of employee
22 abuses and mistreatment. That's now been resolved.

23 But I see the pattern happening at my institution. I
24 don't blame Bud Prunty for that. But there is some middle
25 management supervisors that are out there that I think are very
26 zealous in that.

27 One example was where we had one employee, a pregnant
28 female, who was taken into an office by four supervisors. When

1 she walked in there, I guess it was for admonishment, she
2 attempted to sit down. The four supervisors pointed to a chair
3 in the middle of the room. They drew the blinds, and told
4 her, "This is the hot seat. You sit there." They were
5 continually belittling her. She came out crying and came to me
6 for help.

7 Another example, in housing units there's a control
8 booth where the weapons are stored, and that's where the
9 officers monitor inmate movement. And there's holes in the
10 floor where an officer uses to point the weapon for inmate
11 movement. And while we made complaints about that, filed
12 numerous grievances, we had a female officer fall through that.
13 She's crippled for life. She has back problems. She was
14 medically discharged from her reserve duty in the military.

15 Another example is, we had two officers. They were
16 ordered to work in infectious wastes -- human feces, urine -- by
17 a supervisor. They practically begged the supervisor they
18 didn't want to work there, please allow us to clean it up first.
19 And the supervisor didn't allow it. They became ill. And they
20 came out of that position, and they ordered two more officers to
21 work in that.

22 We see these as problems that need to be addressed.
23 That's what we're trying to get done today.

24 CHAIRMAN LOCKYER: Thank you, sir.

25 Anyone else that would wish to make any comments?

26 MR. CORCORAN: Mr. Chairperson, Members of the
27 Committee, my name is Lance Corcoran. I'm the Chapter President
28 of CCPOA from Susanville, California.

1 I will make my comments extremely brief.

2 I'm not the statewide president; I'm not the lobbyist
3 for the Association. I was part of an outside team of chapter
4 presidents that was sent by CCPOA to try to find out if some of
5 the allegations that were being made were correct.

6 This was unique. It hadn't been done before with
7 CCPOA.

8 Upon arrival, we had certain findings. We found that
9 there was a perception of a hostile work environment. We held a
10 meeting for 48 straight hours, right there in Calipatria. And
11 that was a burden, I want to tell you.

12 But at any rate, what we found over interviews with
13 approximately 150 staff members, not just one, was that there's
14 a perception of us against them. Our own team is divided in
15 Calipatria.

16 And if we can resolve any issue, if Mr. Prunty can
17 resolve any issue, I think that would be the first on his list.

18 CHAIRMAN LOCKYER: How do you reconcile that
19 observation with the testimony from the gentleman representing
20 the CSEA chapter, that there's this new commitment to
21 participatory workplace management?

22 MR. CORCORAN: I can only tell you from my experience
23 in those interviews. And also, I remember that gentleman coming
24 into the ERO's office while I was there as part of this team,
25 and he was expressing some frustrations. I believe that they'd
26 lost his transfer package three times. I found it unique,
27 inconsistent.

28 At any rate, we saw some breaches of security. We

1 saw some problems there.

2 We put together a report asking for some action. We
3 also wrote letters to the Appointments Director of this
4 Committee, asking for information.

5 I guess the biggest frustration for those members
6 there at that institution and for those job stewards is that
7 they weren't being afforded a response to their grievances.
8 They weren't being given any information that they requested.

9 And thankfully, through the help of this Committee,
10 and through the help of Nancy Michel, we got a detailed response
11 to almost every one of our issues written by Mr. Prunty. But
12 it's unfortunate that we had to come to this level to finally
13 get that response.

14 In conclusion, I think that a number of the things
15 that you've seen today show clearly the need for an outside
16 agency to investigate wardens.

17 As a member of a union team sent to Calipatria to
18 investigate what the union was alleging, I have to tell you, I
19 had a certain bias. I was looking for things from a union
20 perspective. And how a team of administrators, or people who
21 want to be administrators, can go into a situation and
22 objectively look at it, that's really something. I don't know
23 how they can do that, because I found that I could not. I did
24 look at things from a union perspective. I did try to find
25 problems as opposed to solving them, initially, because I think
26 that that would be a positive step.

27 The other thing is that I think very clearly that
28 if there are problems existing, the wardens do not like to go

1 through confirmation processes. I don't think it would be a bad
2 thing to have a review, say, every five years.

3 CHAIRMAN LOCKYER: They move around faster than that.
4 They're like term limits, you know. It doesn't matter; it
5 happens anyhow.

6 [Laughter.]

7 MR. CORCORAN: I think the reason that CCPOA has sort
8 of altered its position to one of neutrality is one that perhaps
9 the local chapter recognized that the problems at Calipatria
10 were not necessarily indicative of Bud Prunty's management
11 style, but of the Department of Corrections as a whole. And I
12 know that the Department has started to put together plans to
13 deal with the way it treats its people. One of them is the TOP
14 program: the Treatment of People class.

15 I find it ironic that the Department has to have a
16 class to teach people how to treat others. I thought that was
17 called the Golden Rule.

18 At any rate, I want to thank this Committee for your
19 valuable time. Thank you for staying so late. And also, I want
20 to mention a thank you to Nancy Michel and to Ken Hurdle for
21 their help in maybe starting to resolve some of the problems at
22 Calipatria and the Department of Corrections.

23 Thank you.

24 CHAIRMAN LOCKYER: Thank you.

25 MS. DEXTER: Good evening. My name's Debra Dexter.
26 I am the Assistant Chairperson for the Association of Black
27 Correctional Workers, El Centro Chapter.

28 I am also an employee at Calipatria State Prison. I

1 am here today to express the support of the organization in
2 confirming Mr. Prunty as Warden of Calipatria State Prison.

3 There's been many issues that I have brought to him
4 on behalf of the organization, and he has always had an open
5 door policy. He's been willing to listen, and he has made some
6 appropriate changes.

7 On a more personal note, since I activated Calipatria
8 in 1991, I can agree from day one, there were a lot of problems
9 at that institution. I was there in the capacity of a
10 correctional sergeant.

11 What you all need to know is that probably 95 percent
12 of the staff there were all brand-new supervisors, and brand-new
13 officers, and brand-new administrators. A lot of the problems
14 that Calipatria had at the time, Mr. Prunty has corrected them.

15 Now, the institution is not running perfectly;
16 however, it is running 100 percent better than what it was.
17 There were numerous people at one time that wanted to transfer
18 out of the institution. Right now, you'll find that the
19 transfer packets have slowed down. People are starting --
20 finally starting to feel a sense of security. And when they do
21 have a problem, they can take it to someone, and Mr. Prunty is
22 willing to listen, and he does make appropriate changes.

23 The CCPOA President spoke on a couple of issues. A
24 couple of them I am aware of. The officer that did fall through
25 the porthole is not crippled. She's part of our organization,
26 and she's now back working. She's been back to work for at
27 least six months.

28 She did have difficulties for a while, but there were

1 other issues involved that had to do with partly some of her
2 negligence also.

3 So, there are problems, and you know, right now I'm
4 in a different position because I'm now out of uniform and I am
5 a part of CCPOA.

6 And I just wanted to let you all know that there has
7 been changes there, and Mr. Prunty is one that you can take your
8 problems to, and he will listen.

9 Thank you.

10 CHAIRMAN LOCKYER: Thank you very much.

11 Yes, sir.

12 MR. ROTHCHLD: My name is Don Rothchld. I'm a
13 correctional sergeant at Calipatria.

14 Mr. Prunty is a hands-on administrator. Since his
15 arrival at Calipatria State Prison, numerous systems have been
16 implemented which have directly improved the operation of the
17 institution. Mr. Prunty initiated a new inmate custody
18 criteria which immediately created a safer working environment
19 for staff, provided additional protection for the public, and to
20 the inmates housed at Calipatria. The improved security
21 measures and procedures have resulted in increased staff morale.

22 I have been at Calipatria since December of '91, when
23 we activated. I've seen a remarkable change, both in the way
24 the institution is ran, the security, and the morale of the
25 staff at the institution.

26 For these and many other reasons, I support the
27 confirmation of Mr. Prunty.

28 CHAIRMAN LOCKYER: Thank you.

1 MR. CRAMER: Mr. Chairman, Members of --

2 CHAIRMAN LOCKYER: I don't think he's at any great
3 risk here. Quantity isn't necessary.

4 MR. CRAMER: I'll make it quick.

5 My name is Carl Cramer. I'm the Food Manager at
6 Calipatria State Prison.

7 I believe that Warden Prunty is the warden that we
8 need there. The communication is what it's all about; he
9 provides it. If my subordinates wish to talk to the warden,
10 they can, and I think that's very important, that there is
11 someplace to go.

12 Thank you very much.

13 CHAIRMAN LOCKYER: Thank you, sir.

14 MS. ROSARIO: Hi. I'm Gloria Rosario, correctional
15 officer at California State Prison, Sacramento.

16 I've known Bud for between 15-20 years. And I became
17 a correctional officer in 1989, when Mr. Prunty was the Chief
18 Training Officer. At that time, he was concerned about the
19 treatment of cadets, and he asked me when I entered the Academy
20 to keep an eye out, because he'd heard that the cadets had to do
21 30 pushups.

22 And he is -- he grew up in the old school, but he is
23 from the new generation, and he wanted to train us to be
24 respectable, so we'd respect each other.

25 And then I became involved with the Women's Liaison
26 Council when he was in R. J. Donovan. He asked me to send him
27 the newsletters so that he could format their newsletter. So,
28 he's been very supportive of the women staff.

1 And that's all I have to say.

2 CHAIRMAN LOCKYER: Did we catch everybody?

3 Questions from Members?

4 Mr. Prunty, there is not a right or a wrong answer to
5 this, but I'd just be interested in your reflections on two
6 things: determinate versus indeterminate. Any sense of which
7 is a better policy

8 MR. PRUNTY: I think indeterminate. If I had a
9 choice, indeterminate.

10 I think that the determinate sentence in itself, in
11 its intention to be fair and equitable in the sentencing,
12 criminals are individuals. They are better prepared to go back
13 at different times.

14 I think that their review annually, or at regular
15 intervals, by a releasing authority was a good thing and is a
16 good thing.

17 CHAIRMAN LOCKYER: How about weights? This seems to
18 be a controversy in some circles. Do you think it's useful, or
19 should be gotten rid of?

20 MR. PRUNTY: Let me answer that in this way.

21 The purpose of the Department of Corrections is to
22 protect the public and it's to punish offenders. And the
23 punishment is the loss of their freedom, their incarceration.
24 We do both very well, I think.

25 We need to keep in mind, however, if we don't do
26 something positive with the inmates while they're there, they
27 are going to go home much worse than when they came, and
28 especially if they're kept there longer and longer periods of

1 time, and we're keeping them longer and longer periods of time,
2 and legitimately so.

3 However, the majority of them are going to go home,
4 so we need to do something very positive. And I believe firmly
5 in positive programming for inmates. That's academic and
6 vocational training, work assignments, and I think also that
7 recreation is an integral part of that.

8 Weight lifting is a positive thing for inmates. It
9 needs to be controlled, as any privilege is. If it's abused, we
10 need to be able to curtail that.

11 Many staff, I think, and many citizens are concerned
12 with the inmates getting very bulky and becoming more
13 terrorizing than they were before. But I can tell, my
14 experience is, the difficulties I've had with inmates are not
15 with the weight lifters. A 98-pound weakling with a .45 magnum
16 probably is more intimidating than any weight lifter on the
17 streets.

18 CHAIRMAN LOCKYER: Are there some kind of lingering
19 labor problems in your institution? Do you want to talk about
20 that?

21 MR. PRUNTY: Well, there are -- there are some
22 disagreements, I think, between the bargaining unit and myself.
23 You've heard some of them.

24 I've not changed the way I've done business in all
25 the time I've been with this Department. I have never seen -- I
26 never encouraged, nor never have I tolerated an "us and them"
27 attitude. I don't believe in it. We're all members of the same
28 organization; we all need to be working in the same direction,

1 and we all need to be cooperating.

2 When I got there, there were some very strained
3 relationships. I dealt with a lot of new staff, a lot of new
4 supervisors, a lot of difficult problems with the institution.
5 Many people felt very strongly about the position they were
6 taking on certain issues, and some had offended each other, and
7 communication was very poor.

8 I've worked very hard to try to correct that. I
9 think we've made a lot of progress. I think there's a lot more
10 to be done.

11 Supervisors and employees need to recognize they're
12 on the same side, even though they have somewhat different
13 responsibilities. But the treatment of people -- you heard
14 Mr. Corcoran, I believe, speak about the treatment of people. I
15 think that's part of the job we do all day long with each other,
16 and it goes both ways, from line staff to supervisors, and from
17 supervisors to line staff. Everybody has to be involved and
18 treat each other well, even when we have to do some difficult
19 jobs.

20 CHAIRMAN LOCKYER: Thank you, sir.

21 What's the pleasure of the Committee?

22 SENATOR CRAVEN: Move.

23 CHAIRMAN LOCKYER: We have a motion by Senator
24 Craven.

25 Call the roll.

26 SECRETARY WEBB: Senator Ayala.

27 SENATOR AYALA: Aye.

28 SECRETARY WEBB: Ayala Aye. Senator Beverly.

1 SENATOR BEVERLY: Aye.

2 SECRETARY WEBB: Beverly Aye. Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Petris Aye. Senator Craven.

5 SENATOR CRAVEN: Aye.

6 SECRETARY WEBB: Craven Aye. Senator Lockyer.

7 CHAIRMAN LOCKYER: Aye.

8 SECRETARY WEBB: Five to zero.

9 CHAIRMAN LOCKYER: Good luck, sir.

10 [Thereupon this portion of the
11 Senate Rules Committee hearing
12 was terminated at approximately
13 6:26 P.M.]

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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